

THE  
CONTINUATION  
OF AN  
HISTORICALL  
DISCOURSE,  
OF THE GOVERNMENT OF  
ENGLAND,

*Until the end of the Reign of Queen*  
ELIZABETH.

WITH  
A Preface , being a Vindication of the  
ancient way of Parliaments in  
ENGLAND.

By *Nath. Bacon* of *Grays-Inn*, Esquire.

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## The Contents of the several Chapters of this Book.

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I. The sum of the several Reigns of Edward the Third, and Richard the Second.	fol. 3.
II. The state of the King and Parliament, in relation of him to it, and of it to him.	fol. 13.
III. Of the Privy Council, and the condition of the Lords.	f. 26.
IV. Of the Chancery.	fol. 35.
V. Of the Admiral's Court.	fol. 41.
VI. Of the Church mens interest.	fol. 45.
VII. Concerning Trade.	fol. 64.
VIII. Of Treason and Legiance, with some considerations concerning Calvin's Case.	fol. 76.
IX. Of Courts for causes criminal, with their Laws.	fol. 92.
X. Of the course of Civil Justice during these times.	fol. 96.
XI. Of the Militia in these times.	fol. 98.
XII. Of the Peace.	fol. 108.
<hr/>	
XIII. A view of the summary courses of Henry the Fourth, Henry the Fifth, and Henry the Sixth, in their several Reigns.	fol. 115.
XIV. Of the Parliament during the Reigns of these several Kings.	fol. 127.
XV. Of the Custos, or Protector Regni.	fol. 134.
XVI. Concerning the Privy Council.	fol. 141.
XVII. Of the Clergy and Church-government during these times.	fol. 146.
XVIII. Of the Court of Chancery.	fol. 162.
XIX. Of the Courts of Crown pleas, and Common Law.	fol. 165.
XX. Concerning Sheriffs.	fol. 168.
XXI. Of Justices and Laws concerning the Peace.	fol. 170.
XXII. Of the Militia during these times.	fol. 175.

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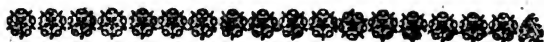
## The Contents.

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XXIII.	<i>A short survey of the Reigns of Edward the Fourth, Edward the Fifth, and Richard the Third.</i>	fol.181.
XXIV.	<i>Of the Government in relation to the Parliament.</i>	f.187.
XXV.	<i>Of the condition of the Clergy.</i>	fol.191.
XXVI.	<i>A short sum of the Reigns of Henry the Seventh, and Henry the Eighth.</i>	fol.194.
XXVII.	<i>Of the condition of the Crown.</i>	fol.202.
XXVIII.	<i>Of the condition of the Parliamento in these times.</i>	fol.223.
XXIX.	<i>Of the power of the Clergy in the Convocation.</i>	f.229.
XXX.	<i>Of the power of the Clergy in their ordinary Jurisdiction.</i>	fol.223.
XXXI.	<i>Of Judicature.</i>	fol.241.
XXXII.	<i>Of the Militia.</i>	fol.245.
XXXIII.	<i>Of the Peace.</i>	fol.253.
XXXIV.	<i>Of the general Government of Edward the Sixth, Queen Mary, and Queen Elizabeth.</i>	fol.259.
XXXV.	<i>Of the Supreme power during these times.</i>	fol.268.
XXXVI.	<i>Of the power of the Parliament during these times.</i>	fol.277.
XXXVII.	<i>Of the Jurisdiction Ecclesiastical during these latter times.</i>	fol.283.
XXXVIII.	<i>Of the Militia in these latter times.</i>	fol.290.
XXXIX.	<i>Of the Peace.</i>	fol.297.
XL.	<i>A Summary Conclusion of the whole matter.</i>	fol.300.

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# A P R E F A C E.

CONTAINING

A Vindication of the Ancient way of  
the Parliament.

O F

E N G L A N D.

**T***He more Words, the more Faults*, is a divine Maxime, that hath put a stop to the publishing of this Second Part for some time; but observing the ordinary humour still drawing off, and passing a harsher censure upon my intentions in my First Part, than I expected: I do proceed to fulfill my course, that if censure will be, it may be upon better grounds, when the whole matter is before: Herein I shall once more mind, that I meddle not with the Theological right of Kings, or other Powers, but with the Civil Right in Fact, now in hand. And because some Mens Pens of late have ranged into a denial of the Commons ancient right in the Legislative power; and others, even to adnuil the right, both of Lords and Commons therein, resolving all such power into that one principle of a King, *Quicquid libet, licet*; so making the breach much

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## *The Preface.*

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much wider than at the beginning; I shall intend my course against both: As touching the Commons right, joyntly with the Lords, it will be the main end of the whole; but as touching the Commons right, in competition with the Lords, I will first endeavour to remove out of the way what I find published in a late Tractate concerning that matter, and so proceed upon the whole.

The subject of that Discourse consisteth of three parts, one to prove that the ancient Parliaments, before the thirteenth Century, consisted only of those whom we now call, the House of Lords; the other, that both the Legislative and Judicial Power of the Parliament rested wholly in them: Lastly, that Knights, Citizens, and Burgeses of Parliament, or the House of Commons, were not known nor heard of, till punier times than these. This last will be granted, *Viz.* That their several Titles, of Knights, Citizens, and Burgeses, were not known in Parliament till of latter times: Nevertheless, it will be insisted upon, that the Commons were then there: The second will be granted, but in part, *Viz.* That the Lords had much power in Parliament in point of Jurisdiction, but neither the sole, nor whole.

The first is absolutely denied, neither is the same proved by any one instance or pregnant ground in all that Book, and therefore not clearly demonstrated by Histories and Records beyond contradiction, as the Title Page of that Book doth hold forth to the World. First, because not one instance in all that Book is exclusive to the Commons; and so the whole  
Argument

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## The Preface.

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Argument of the Discourse will conclude, *Ab authoritate Negativa*, which is no argument in humane testimony at all.

Secondly, The greatest number of instances in that Book, are by him supposed to concern Parliaments, or general Councils of this Nation, holden by the Representative thereof; whereas indeed they were either but Synodical Conventions for Church-matters, whereunto the poor Commons (he well knoweth) might not come, unless in danger of the Canons dint; or if they did, yet had no other work there, then to hear, learn, and receive Laws, from the *Ecclesiasticks*. And the Lords themselves, though present, yet under no other notion were they, than as Counsel to the King, whom they could not cast out of their Council till after Ages, though they often endeavour'd it.

Thirdly, The Authour of that Tractate also well knoweth, that Kings usually made Grants and Infeodations by advice of the Lords, without the aid of the Parliament: And it is no less true, that Kings, with the Lords, did in their several ages exercise ordinarily Jurisdiction, in cases of distributive Justice; especially after the Norman entrance: For the step was easie from being Commanders in War, to be Lords in Peace; but hard to lay down that power at the Foot of Justice, which they had usurped in the rude times of the Sword, when Men labour for life rather than liberty; and no less difficult to make a difference between their deportment in commanding of Soldiers, and governing of Country-men; till  
peace

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## *The Preface.*

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peace by continuance had reduced them to a little more sobriety : Nor doth it seem irrational, that private differences between party and party, should be determined in a more private way, than to trouble the whole Representative of the Kingdom, with matters of so mean concernment. If then, those Councils mentioned by the Authour, which concern the King's Grants, and Infeodations, and matters of Judicature, be taken from the rest of the Precedents, brought by him, to maintain the thing aimed at ; I suppose scarce one stone will be left for a foundation to such a glorying Structure, as is pretended in the Title Page of that Book : And yet I deny not, but where such occasions have befallen the Parliament sitting, it hath closed with them, as things taken up by the way.

Fourthly, It may be that the Authour hath also observed, that all the Records of Antiquity passed through (if not from) the hands of the Clergy only, and they might think it sufficient for them to honour their Writings, with the great Titles of Men of Dignity in the Church and Common-Wealth, omitting the Commons, as not worthy of mention, and yet they might be there then present, as it will appear they were in some of the particular instances ensuing, to which we come now in a more punctual consideration.

The first of these by his own words, appear to be a Church-mote, or Synod ; it was in the year 673. called by the Arch-Bishop ; who had no more power to summon a Parliament, than the Authour himself hath : And the several conclusions

## The Preface.

sions made herein, do all shew that the people had no work there, as may appear in the several relations thereof, made by *Matthew Westminster*, and *Sir Henry Spelman*, an Author that he makes much use of, and therefore I shall be bold to make the best use of him that I can likewise, in vindicating the truth of the point in hand : For, whatever this Council was, it's the less material, seeng the same Author recites a precedent of *Æthelbert*, within six years after *Austins* entry into this Island, which was long before this Council, which bringeth on the Van of all the rest of the Opponents instances, which King called a Council, stiled, *Commune Concilium tam Cleri quam Populi*: *Pag. 126.* and in the conclusion of the same, a Law is made upon the like occasion, *Si Rex populum Convocaverit*, &c. in both which it's evident, that in those times there were Councils holden by the people, as well as the *Magnates* or *Optimates*.

His next instance is in the year 694. which is of a Council holden by the Great Men, but no mention of the Commons, and this he will have to be a Parliament, albeit, that he might have found both Abbesses, or Women, and Presbyters, to be Members of that Assembly, and (for default of better) attested the Conclusions of the same, notwithstanding the Canon, *Nemo militans Deo*, &c. But I must also mind him, that the same Author reciteth a Council holden by King *Ina*, *suasu omnium Aldermanorum, & Seniorum, & Sapientum Regni* : and is very probable, that all the Wise men of the Kingdom, were not included within the Lordly Dignity.

## The Preface.

Council Brit.  
Pag. 212.

The third instance can have no better success, unless he will have the Pope to be allowed power to call a Parliament, or allow the Arch-Bishop power to do that service by the Pope's command, for by that Authority; this (whatever it be) was called, if we give credit to the Relations of Sir Henry Spelman, who also reciteth another Council within three leaves foregoing this, called by *Withered at Barkhamstead*, unto which the Clergy were summoned, *Qui cum viris utique militaribus communi omnium assensu has leges decrevere*. So as it seemeth in those times, Soldiers or Knights were in the Common Councils, as well as other great Men.

Ibid p. 194.

Ibid. p. 242.  
245.

In the next place, he bringeth in a Council holden in the year 747. which (if the Archbishop were then therein President, as it's said, in the presence of the King) was no Parliament, but a Church-mote, and all the conclusions in the same do testifie no less; they being every one concerning Ecclesiastical matters.

Pag. 219.

And furthermore, before this time, the Author out of whom he citeth this Council, mentioneth another Council holden by *Ina* the Saxon King, in the presence of the Bishops, Princes, Lords, Earls, and all the wise old Men, and People of the Kingdom, all of them concluding of the intermarriage between the *Brittons*, *Picts* and *Saxons*, which formerly, as it seemeth, was not allowed: And the same King by his Charter, mentioned by the same Penman, noteth that his endowment of the Monastery of *Glastenbury* was made; not only in the presence of the Great Men, but, *Cum presentia populationis*; and he saith, that *Omnes confirmaverunt*, which

## The Preface.

which I do not mention as a work necessary to be done by the Parliament, yet such an one as was holden expedient as the case then stood.

Forty years after, he meeteth with another Council, which he supposeth to be a Parliament also, but was none, unless he will allow the Pope's Legate power to summon a Parliament: It was holden in the year 787. and had he duely considered the return made by the Pope's Legate, of the Acts of that Council; which is also published by the same Author, he Pag. 301. might have found, that the Legate saith, that they were propounded in publick Council, before the King, Arch-Bishop, and all the Bishops and Abbots of the Kingdom, Senators, Dukes or Captains, and people of the Land, and they all consented to keep the same.

Then he brings in a Council holden in the year 792. which he would never have set down in the list of Parliaments, if he had considered how improper it is to construe, *Provinciale tenuit Concilium*, for a Parliament, and therefore I shall need no further to trouble the Reader therewith.

The two next are supposed to be but one and the same; and it's said to be holden, *Anno 974.* before nine Kings, fifteen Bishops, twenty Dukes, &c. which for ought appears, may comprehend all *England* and *Scotland*; and is no Parliament of one Nation, but a party of some Nations, for some great matter, no doubt, yet nothing in particular mentioned, but the solemn laying the foundation of the Monastery of *Saint-Albans*.

What manner of Council the next was, appeareth not, and therefore nothing can be con-

## The Preface.

cluded therefrom, but that it was holden, in the year 797. •

Pag. 321.

That Council which is next produced, and in the year 800. and is called in great Letters, *Concilium Provinciale*, which he cannot Grammatically construe to be a Parliament; yet in the Preface it is said, that there were *Viri cujuscunque dignitatis*; and the King in his Letters to the Pope, saith concerning it, *Visum est cunctis gentis nostre sapientibus*; so as it seemeth by this, and other Examples of this nature, that though the Church-motes invented the particular conclusions, yet it was left to the Witagen-mote to judge and conclude them. •

Concil. Brit.  
Pag. 328.

There can be no question, but the next three precedents brought by the Opponent, were all of them Church-motes: For the first of them, which is said to be holden in the year 816. is called a Synod, and both Priests and Deacons were there present, which are no Members of Parliament, consisting only of the House of Lords, and they all of them did, *Pariter tractare de necessariis & utilitatibus Ecclesiarum*. The second of them is called a Synodal Council holden, Anno 822. and yet there were then present, *Omnium dignitatum optimates*, which cannot be understood only of those of the House of Lords, because they ought all to be personally present, and therefore there is no Optimacy amongst them. The last of these three is called; *Synodale Conciliabulum*, a petty Synod in great Letters; and besides, there were with the Bishops and Abbots, many wisemen; and in all these respects it cannot be a Parliament only of the great Lords.

Concil. Brit.  
Pag. 334.

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## *The Preface.*

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The next Council said to be holden in the year 823. cannot also be called properly a Parliament, but only a consultation, between two Kings and their Council, to prevent the invasion of the Danes; and the attests of the King's Chaplain, and his Scribe, do shew also that they were not all Members of the House of Lords.

The Council cited by the Opponent in the next place was holden, *Anno* 838. being only in nature of a Council for Law, or Judicature, to determine the validity of the King's Grant made to the Church of *Canterbury*, which is no proper work for a Parliament, unless it befall during the sitting of the same.

The next is but a bare title of a Council supposed to be holden, *Anno* 850. And not worth its room, for it neither sheweth whether any thing was concluded, nor what the conclusions were.

The work of the next Council alleadged to be holden, *Anno* 851. was to confirm the Charter of the Monastery of *Croyland*, and to determine concerning affairs belonging to the *Mercians*; and if it had been a Parliament for that people, it might be worthy of inquiry how regularly the Arch-Bishop of *Canterbury*, and the Bishop of *London*, and the Ambassadors from the West Saxons could sit amongst them, and attest the conclusions therein made, as well as the proper members of that Nation.

He cometh in the next place to a Council, holden in the year 855. which is more likely to be a Parliament, than most of them formerly mentioned; if the Tithes of all *England* were therein given to the Church, but hereof I have set down my opinion in the

## The Preface.

the former part of the Discourse. And though it be true, that no Knights and Burgesses are therein mentioned, as the Opponent observeth out of the Title; yet if the body of the Laws be duly considered, towards the conclusion thereof it will appear that there was present, *Fidelium infinita multitudo qui omnes regium Chirographum Laudaverunt, Dignitates verò sua nomina subscripserunt.* And yet the Witagen motives in these times began to be rare, being continually interrupted by the invasions of the Danes.

Concil. Brit.  
Pag. 350.

The three next Councils alleadged to be in the years 930. 944. 948. Were doubtless of inferiour value, as the matters therein concluded were of inferiour regard, being such as concern the passing of the King's Grants, Inscodations and Confirmations.

Concil. Brit.  
Pag. 480.

The Council mentioned to be in the year 965. is supposed to be one and the same with the next foregoing, by Sir Henry Spelman, which calls it self a General Council, not by reason of the general confluence of the Lords and Laity, but because all the Bishops of England did then meet. The *Primi* and *Primates* were there, who these were is not mentioned; but its evident that the King of Scots was there, and that both he and divers that are called *Ministri Regis*, attested the Conclusions: It will be difficult to make out how these should be Members of the House of Lords, and more difficult to shew a reason why in the attesting of the Acts of these Councils which the Opponent calls Parliaments, we find so few of the Laity, that scarce twelve are mentioned in any one of them, and those to descend

## The Preface.

scend so low as the *Ministri Regis*, to make up the number.

Five more of these instances remain, before the coming of the Normans.

The first of which was in the year 975. and in a time when no Parliament, according to the Opponents principles could sit, for it was an *Inter reg-*  
*num.* *Concil Brit.*  
*Pag. 490.*

The two next were only Synods to determine the difference between the Regulars, and the Seculers, in the King's absence, by reason that he was under age; and they are said to be in the year 977 and 1009. But it's not within the compass of my matter to debate their dates.

The last two were Meetings or Courts for Judicature, to determine the Crime of Treason, which every one knows is determinable by inferiour Courts before the high Steward or Judges, and therefore not so peculiar to a Parliament, as to be made an argument of its existence. And thus are we at an end of all the instances brought by the Opponent, to prove that Parliaments before the Norman times consisted of those whom we now call the House of Lords. All which I shall shut up with two other Notes taken out of the Book of Councils, published by Sir Henry Spelman.

The first of which concerneth a Grant made by *Canutus*, of an exemption to the Abby of *Bury Saint Edmunds*, in a Council, wherein were present Arch-Bishops, Bishops, Abbots, Dukes, Earls. *Cum quamplurimis gregariis militibus, cum populi multitudine copiosa votis regiis unanimiter consentientes.* The other taken out of the Confessors Laws, which tells us

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## The Preface.

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Page 621.

us that Tithes were granted to the Church, *A Rege Baronibus & populo*. And thus shall leave these Testimonies to debate with one another, whiles the Reader may judge as seemeth most equal to himself.

Being thus come to the Norman times, and those ensuing; I shall more summarily proceed with the particulars concerning them, because they were times of force, and can give little or no evidence against the Customs rightly settled in the Saxon times, which I have more particularly insisted upon, that the Original Constitution of this Government may the better appear. Now for the more speedy manifesting of the truth in the particulars following; I shall pre-advise the Reader in three particulars.

First, that the Church-motes grew more in power and honour, by the aid of the Normans Law, refusing the concurrence and personal presence of Kings, whom at length they excluded from their Councils with all his Nobles; and therefore it is the less wonder, if we hear but little of the Commons joyn-ing with them.

Secondly, that the Norman way of Government grew more Aristocratical than the Saxon, making the Lords the chief Instruments of keeping Kings above, and people underneath; and thus we meet with much noise of meetings between the King and Lords, and little concerning the grand meetings of the Kings, and the representative of the people; although some foot-steps we find even of them also. For Kings were mistaken in the Lords; who meant nothing less than to serve them with the peoples liberties,

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## *The Preface.*

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Liberties, together with their own, which they saw wrapped up in the gross.

Thirdly, by this means the Councils of the King and Lords grew potent, not only for advice in particular occasions, but in matters of Judicature, and declaring of Law, ordering of Process in Courts of Pleas; which in the first framing were the Works of the Wise and Learned men, but being once settled, become part of the Liberties of every Free-man. And it is not to be doubted but these Councils of Lords did out-reach into things too great for them to manage, and kept the Commons out of possession of their right, during the present heat of their ruffling condition, yet all this while could not take absolute possession of their Legislative power.

I now come to the remainder of the particular instances produced by the Opponent, which I shall reduce into several Categories, for the more clear satisfaction to the Reader, with less tediousness.

First, it cannot be denied but the Council of Lords gave advice to Kings in Cases of particular emergency, nor is it incongruous to the course of Government, even to this day, nor meet that the Parliament should be troubled with every such occasion, and therefore the giving of advice to *William* the Conqueror,\* what course he should take to settle the Laws of *England* according to the instances in Councils holden, *Anno* 1060. and 1007. And to gain favour of the great men, according to that in *Anno* 1106. and in the manner of endowment of the Abby of *Battel*, as in pag. 25. of the Opponents discourse: and what to do upon the reading of the Pope's Letter, according to that in *Anno* 1114.

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## The Preface.

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Pag. 13.

And whether the Pope's Legate should be admitted, as in pag. 18. And how King *Steven* and *Henry* shall come to agreement, as *Anno 1153*. And how to execute Laws by Judges and Justices *Itinerant*, as *Anno 1176*. And touching the manner of ingaging for a voyage by *Croisado* to *Jerusalem*, *Anno 1189*. And to give answer to Embassadors of a Foreign Prince, pag. 25. And how King *John* shall conclude peace with the Pope, *Anno 1213*. Where nevertheless *Matth. Paris* saith, was *Turba multa nimis*: I say all these might well be done by a Council of Lords, and not in any posture of a Parliament; albeit, that in none of all these doth any thing appear, but that the Commons might be present in every one, or many of them all.

Secondly, as touching Judicature, the Lords had much power therein, even in the Saxon times, having better opportunities for Knowledge and Learning, especially joyned with the Clergy, than the Commons in those times of deep darknes, wherein even the Clergy wanted not their share, as in the first part of the Discourse I have already observed. Whatsoever then might be done by Judges in ordinary Courts of Judicature, is inferiour to the regard of the Parliament; and therefore the Plea between the Arch-Bishop and *Ethelstan*, concerning Land, instanced, *Anno 1070*. And between *Lanfranke* and *Odo*, *Anno 1071*. and between the King and *Anselme*, pag. 15, 16. and the determining of Treason of *John* (afterwards King) against his Lord and King *Richard*, pag. 23. And the difference concerning the title of a Barony between *Mowbray* and *Scotville*, pag. 25. And giving of security of good behaviour by

## *The Preface.*

by *William Brouse* to King *John*, pag. 26. All these might well be determined only before the Lords, and yet the Parliament might be then sitting or not sitting, as the contrary to either doth not appear, and therefore can these form no demonstrative ground to prove that the Parliament consisted in those times, only of such as we now call the House of Lords.

A third work whereby the Opponent would prove the Parliament to consist only of the House of Lords, is, because he findeth many things by them concluded touching the solemnization, and the setting of the succession of Kings; both which, he saith, were done by the Lords in Parliament, or those of that House; and I shall crave leave to conclude the contrary: For neither is the Election, or Solemnization of such Election, a proper work of the Parliament, according to the Opponents principles, nor can they prove such Conventions, wherein they were to be Parliaments. Not the Election of Kings, for then may a Parliament be without a King; and therefore that instance concerning *William Rufus*, pag. 16. will fail, or the Opponents principles, who will have no Parliament without a King.

The like may also be said of the instance concerning King *Steven*, pag. 18. Much less can the Solemnization of the Election by Coronation, be a proper work for the Parliament: Nevertheless, the Opponent doth well know that both the Election of a King, and the Solemnization of such Election by Coronation, are Spiritless motions, without the presence of the people; and therefore

## The Preface.

Mr. Selden's  
Titles of Ho-  
nour.

though his instance, page 17. concerning the Election of *Henry* the First, by the Bishops and Princes, may seem to be restrictive as to them, yet it is not such in fact; if *Matthew Paris* may be believed, who telleth us, that in the *Conventus omnium*, was *Clerus* and *Populus universus*, and might have been noted by the Opponent out of that Learned Antiquary, so often by him cited, if he had pleased to take notice of such matters.

A fourth sort of Instances, concerneth matters Ecclesiastical, and making of Canons; and hereof enough hath been already said, that such Work was absolutely challenged by the Church-motes, as their proper Work; and therefore the Instance, page 16, 17. of the Council in *Henry* the First's time, and the Canons made by the Bishops there; and that other called by *Theobald* Arch-Bishop of *Canterbury*, and instanced by the Opponent, page 19. I say, both these do fail in the conclusion propounded.

Fifthly, as touching the most proper Work of Parliament, which is, the making of Laws concerning the Liberties and Benefit of the people; the Opponent produceth not one instance concerning the same, which doth not conclude contrary to the proposal; for as touching those two instances in his thirteenth page, *Anno 1060.* they concern not the making of Laws, but the reviving of such as had been disused formerly, which might well enough be done by private Council. But as to that in his fifteenth page, of the Law made by the Conqueror, concerning *Remigius*, Bishop of *Lincoln*, although it be true, that we find not the particular Titles of Knights,



## The Preface.

Knights, Citizens and Burgesſes, yet beſides the Council of Arch-Biſhops, Biſhops and Princes, we find the Common Council; for ſo the words are, *Communi Concilio*, & *Concilio Archiepiſcopus, Episcopuſ, Abatuſ, & omnium Principum*, although the Opponent would ſeem to wave theſe words, *Et Concilio*, but putting them in a ſmall Character, and the reſt in a voluminous Letter, that the Readers eyes might be filled with them, and over-look the other. Tit. Honour,  
pag. 709.

Secondly, as to the inſtance of the Council at *Clarindon*, in his nineteenth page, which he citeth out of *Matthew Paris, Matthew Weſtminſter*, and *Hoveden*, although he pleaſeth to mention the ſeveral ranks of Great Men, and thoſe in black Letters of a greater ſize; and ſaith, That not one Commoner appears, yet Maſter *Selden's Hoveden*, in that very place, ſo often by the Opponent cited, tells him, that both *Cleruſ* and *Populuſ* were there.

Thirdly, the Opponent citeth an inſtance of Laws made by *Richard* the Firſt, in his twenty fourth page, and he ſetteth down the ſeveral ranks of Great Men, and amongſt the reſt, ingeniouſly mentioneth, *Militeſ*, but it is with a Gloſs of his own, that they were Barons that were made Knights, when as formerly Barons were mentioned in the general, and therefore how proper this Gloſs is, let others judge; eſpecially ſeeing that not only *Militeſ*, and *Militeſ Gregorii*, but even *Miniſtri*, were preſent in ſuch conventions, even in the Saxon times: And Maſter *Selden* in the former known place, mentioneth an Obſervation, that, *Univerſi perſonæ qui de Rege tenent in Capite, ſicut* Tu. Honour,  
pag. 703.

## The Preface.

*ceteri Barones debent interesse judiciis curiæ Domini Regis cum Baronibus.*

Fourthly, he citeth in his twenty fifth pag. another instance in King *Jame's* time, in which, after the assent of Earls and Barons, the words, *Et omnium fidelium nostrorum*, are also annexed, but with this conceit of the Opponents, that these *Fideles* were those that adhered to the King, against his Enemies; be it so, for then the Commons were present, and did assent, or they may be, saith he, some specially summoned as Assistants; take that also, and then all the true hearted in the Kingdom were specially summoned, and were there, so as the conclusion will be the same.

In the fifth place, he cited a strange precedent (as he calls it) of a Writ of Summons in King *John's* time, in his twenty seventh page, wherein *Omnes milites* were summoned, *Cum armis suis*, and he concludes therefore the same was a Council of War.

First, because they were to come armed, its very true, and so they did unto the Councils in the ancient Saxon times, and so the Knights of the Counties ought to do in these days, if they obey the Writ, *Dux Militis gladiis cinctos*, &c.

Secondly, he saith, That the Knights were not to come to Council; that is his opinion, yet the Writ speaks, that the *Discreti Milites* were to come, *Ad loquendum cum Rege de negotiis regni*: It's true, saith he, but not, *Ad tractandum, & faciendum, & consentiendum*: It's true, it's not so said, nor is it excluded; and were it so, yet the Opponents conclusion will not thence arise, That none but the King, and those who are of the House of Lords were there present.

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## *The Preface.*

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The sixth and last instance mentioned by the Opponent, is in his thirtieth page, and concerneth Escuage granted to King *John*, who by his Charter granted, that in such cases he would summon Arch-Bishops, Bishops, Abbots,\*Earls, and the greater Barons, unto such Conventions by special Writs, and that the Sheriff shall summon promiscuously all others which hold in *Capite*; and thence he concludes, That none but the Great Lords, and the Tenants in *Capite* (whom he calls the lesser Barons) were present, but no Knights, Citizens or Burgesses; all which being granted, yet in full Parliament the Citizens and Burgesses might be there. For Councils were called of such persons as suited to the matter to be debated upon.

If for matters purely Ecclesiastical, the King and his Council of Lords, and the Church-men made up the Council.

If for advice in emergencies, the King and such Lords as were next at hand determined the conclusions,

If for Escuage, the King and such as were to pay Escuage, made up a Council to ascertain the sum, which was otherwise uncertain.

If for matters that concerned the common Liberty, *Little. lib. 2.* all sorts were present, as may appear out of the very *cap. 3.* Charter of King *John*, noted in my former discourse, pag. 258. and also from an Observation of *Cambden*, *Brit. Pa. 112.* concerning Henry the Third, *Ad summum honorem pertinet* (said he) *Ex quo Rex Henricus Tertius, ex tanta multitudine quæ seditiosa ac turbulenta fuit optimos quosque ad Comitia Parliamentaria evocaverit.*

Secondly,

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## The Preface.

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Secondly, the Opponent takes that for granted that never will be, *viz.* That all King's Tenants *In Capite* were of the House of Lords; when as himself acknowledged a difference, page 28. *viz.* that the Barons are summoned by Writs, *Sigillatim*, as all the Members of the House of Lords are, but these are by general summons, their number great, and hard it will be to understand, how, or when, they came to be excluded from that Society.

I shall insist no further upon the particulars of this Tractate, but demurr upon the whole matter, and leave it to judgement upon the premises, which might have been much better reduced to the main conclusion, if the Opponent, in the first place, had defined the word *PARLIAMENT*: For it was a Convention without the People, and sometimes without the *KING*, as in the Cases formerly mentioned, of the Elections of *William Rufus*, and of King *Steven*: And if sometimes a Parliament of Lords only, may be against the King, and so without King or People; as in the Case between *Steven* and *Maud* the Empress, and the Case likewise concerning King *John*, both which also were formerly mentioned; possibly it may be thought as rational for the Commons in after Ages, to hold a Parliament without King, or House of Lords; and then all the Opponents labour is to little purpose.

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# THE CONTINUATION

O F

An Historical Discourse of the Government of

# ENGLAND.

**T**H E former times, since the Norman entry like a rugged Sea, by cross Winds of arbitrary vapours, in, and about the Crown, and by Foreign engagements from the holy Chair, made the true face of affairs cloudy and troublesome, both for the Writer and the Reader.

Hence forward, for the space of three hundred years next ensuing, Kings by experience and observation, finding themselves unequal to the double chace of absolute Supremacy, over the Sturdy Laity, and Encroaching Clergy; you will observe, to lay aside their pretensions against the peoples Liberties, and more intently to trench upon the Spirituality, now grown to defie all Government, but that of Covetousness.

Nor would these times allow further advantage to Kings in this work, they being either fainted by the tickle Title

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of

of the Crown, hovering between the two Houses of *York* and *Lancaster*, or drawn off to Foreign employments; as matters of greater concernment for the present well-being of the Kingdom, or for the spreading of the fame of such as desired to be renowned for valiant men.

It will be superfluous to recount the particular achievements formerly attained by these Ecclesiastical men; the former Treatise hath already said what was thought needful concerning that: For the future, I shall even premise this, That the ensuing times being thus blessed with a Truce, or stricter League between the Kings and Commons; the errors in Government more readily do appear; the corruptions in natures of men more frequently discover themselves; and thereby the body of the Statute-Laws begins to swell so big, that I must be enforced to contract my account of them into a narrower compass, and render the same unto the Reader, so far forth only as they shall concern the general stream of Government; leaving those of privater regard, unto every Man's particular consideration, as occasion shall lead him: For what ever other men please to insist upon, this I take for a Maxim, *That though the Government of a King is declared by his Actions, yet the Government of a Kingdom is only manifested by ancient Customs, and publick Acts of Parliament.*

And because I have undertaken a general Survey of the Reigns of thirteen several Kings and Queens of this Nation; (for I shall not exceed the issue of *Henry* the eighth) and to handle each of them apart, will leave the Reader in a Wilderness of particulars, hard to comprehend in the general sum; I shall therefore reduce them all into three heads, *viz.* Interest of Title, Interest of Prerogative, and Interest of Religion, the last of which swayed much the three Children of *Henry* the Eighth: the second as much in their two Ancestors, *viz.* *Henry* the Eighth, and *Henry* the Seventh, and the first in the three *Henries* of *Lancaster*, and three succeeding Kings of the House of *York*: And because *Edward* the Third and his Grandchild *Richard* the Second, do come under none of these

Interests, I shall consider then jointly, as in way of *Exordium* to the rest, although the course of the latter was as different from the former, as Lust falls short of a generous Spirit.

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## CHAP. I.

### *A sum of the several Reigns of Edward the Third, and Richard the Second.*

Several I may well call them, because they are the most different in their ways and ends, of any two of that race that ever swayed their Scepter, and yet the entrance of the first gave countenance to the conclusion of the last. For the Scepter being cast away, or lost by *Edward* the Second, it was the Lot of his Son, *Edward* the Third, a Youth of fifteen years of age, to take it up; he knowing whose it was, and feeling it too heavy for him, was willing enough it should return, but being overswayed by Counsels drawn from reason of State, and pressed thereto by those that resolved not to trust his Father any more, he wisely chose to manage it himself, rather than to adventure it in another hand: but that is not all, for as its never seen that the Crown doth thrive after Divorce from the Scepter, but like a blasted blossom, falls off at the next gale of adversity: such was the issue to *Edward* the Second, his Power once gone, his Honour followeth soon after; he had ceased to be King, and within a small time did cease to be *Edward*.

His Son, thus made complete by his Fathers spoyl; had the honour to be the Repairer of the ruines that his Father had made: and was a Prince which you might think by his story, to be seldom at home, and by his Laws seldom abroad: nor can it be reconciled without wonder, that Pro-

vidence should at once bestow upon *England*, a courageous People, brave Captains, wise Council, and a King that had the endowments of them all. Otherwise it had out-reached conceit it self, that this small Island, wasted by the Barons Wars, the people beaten out of heart by all Enemies, in the time of the Father, should nevertheless in the time of the Son, with honour, wade through so many difficulties of mighty Wars on every side abroad, and devouring Pestilence at home; and yet lay a platform of an Epulent, wise, and peaceable Government, for future Generations.

Yet he had his failings and misfortunes, a great part whereof may be attributed to infirmity of Age; which in the first part of his Reign was too little, and in the latter part too much. True it is, that Governours of the Persons of Kings, may in some measure supply defects of Non-age, but seldom where the Governours are many, and never if they be ambitious: And it was this King's fate to miscarry in both; for he had in his Youth twelve Governours by constitution, and they, two supreme by usurpation, *Viz.* the *Queen* and *Mortimer*, till they were both consumed in the flame which themselves had kindled. And this disparity wrought somewhat unsuccessfully in the King's first War: For the generosity of his spirit (himself being young and active) minded his Council to advise him employment in a Foreign War, rather than they would adventure its motion at home, lest it might prove circular, which is most dangerous for Government, if the Prince be not under command of himself.

This first War was with *Scotland*, whose power was inferiour to that of *France*; the King young, and the danger nearer; and therefore though the last affront was from *France*, that more fresh in memory, and more peinant; yet the King was advised to give place, and speak fair, till he had tryed masteries with *Scotland*, and thereby secured his Rere: This he wisely hearkned unto, and met with such a successful turn of Providence, that like an *O Yes*, before a

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Proclamation, gives warning to *Scotland* that the Wheel is turned upon them; and that there is somewhat more than humane motion in the matter, that exasperates the English upon an enterprize, so often crossed by Providence hitherto; and the King also (being but a Souldier in hope as yet) to dare against those that had so shamefully soiled his Father, and also put himself already once to the Retreat.

And yet there did concur a kind of necessity of second Causes; for the King found the Crown engaged, and the minds of the Scots so elate, as the English-man's case was not to live to Fight, but to Fight to live; and so imbittered against one another by the fierce Wars under the Barons, that nothing could quench the fire, but the withdrawing of the Brands into Foraign action, like some angry spirits that spoil their own bodies, unless they chide or fight it out with others.

In the first brunt with *Scotland*, the King gained nothing, but understanding of the humours of some of his great Lords; which once purged out, he renews the War, prevails; and after ten years stir (wherein he became a trained Soldier against the Scots) he wan the Cross, and then goes to play his Prize in *France*, to complete his Crown with the Flower-de-luce: Which was the great work of the rest of his Reign; in which four parts of five were Victorious; the fifth and last, was declining like some Gamesters, that win at the first, and for want of observacion of the turning of the Dice, come off losers at the end.

For the King being rather satiated than satisfied with Victory and Honour, returned home to enjoy what he had, leaving his Son, the Black Prince, to pursue the War, and to act the Soldiers alone, who now began to honour his Valour above his Father's. But, the Tide is spent, the Prince of Chivalry dies, the brave Commanders wasted; and the French too fickle to continue subject to the English, longer than needs must, tack about for another Adventure, and make

make it plain, that *France* is too bigg to be Garrison'd by *England*, and that it will cost *England* more to hold it than to have it.

*Antiq. Brit.* His Religion was more to the purpose, than of any of his Predecessors since the *Norman* times; he reflected upon God in common events, more ordinarily than the general stream of the Clergy did in those days: He loved, if not adored devout men and their prayers, and yet intently disclaimed opinion of merits in the Creature: He saw the Pope through and through, loved him but little, feared him less, and yet lost neither Honour nor Power thereby.

His chief policy at home, was, to be much at home, great with his People, and they great with him; what the Parliament did, he accounted well done; he never questioned their Power, though he was over-reached in questioning their Wisdom: For he that shall perfer his own wisdom above that of the Parliament, must needs think himself extreamly Wise; and so much the more, to know himself to be such: But the worst of his fate was, to live to his Winter-age, and after fifty years Reign, or more, to dy in his minority under the rule of a Woman of none of the best fame, after he had so long enjoyed the honour of greatest note in the Christian World, in his days.

*Rich. 2.* Such was not *Richard* the Second, though the onely Son of that famous Chieftain, the Black Prince of *Wales*; (a renowned Son of a renowned Father) but (as a Plant transplanted into a Savage soyle) in degree and disposition wholly degenerate, retained a tincture of the light inconsistency of his Mother, and the luxurioufness of his Great Grandfather, *Edward* the Second, and running his course, came to his end.

*The lib. 4. Cap. 21.* His entrance, however by colour of Inheritance, yet was a greater adventure than his Predecessors, that came in by election; upon the designation of his Father by his last Will, say some. For this man came in upon many disadvantages, both of time and person: The times were very troublesome

troublesome, the Kingdom new wrapped up in a double War abroad, and ( which is worse ) flooded with distractions at home, contracted partly by his Predecessor's weaknesses in his decrepit estate; partly by a new interest of Religion sprung up against the Papal Tyranny, from the Doctrine of *Wickliff*; all which required a very wise Man, and a brave Commander, in both which the King failed.

Religion now began to dawn through the fogs of Romish usurpations and superstitions, aided thereto by a Schism in the triple Crown, that continued forty years, with much virulency abroad, and with as bad influence upon our Myters at home: Some of whom were called *Clementines*, others *Urbanists*, and yet none of them all worthy of either of the Names, in their proper signification. The Laity, though lookers on, yet were not quiet: For though Liberty be a hopeful thing, yet its dangerous to them that are not a Law to themselves; especially in matter of Opinion; for that arrains the rule, and layes the way open to licentiousness. And now that the Liberty from the Keyes began to be taught as a duty of Religion, the inferiour sort meet with Doctrines of licentiousness, upon mistake of the notion, and will acknowledge no rule, now they must be all at liberty: and thus sprang up the insurrection of the Servants and Bond-men against their Lords and Masters under *Cade* and *Straw*; that might have brought the Common-Wealth into a hideous *Chaos*, had not the Lords and Great Men betimes bestirred themselves; and the King shewed an extraordinary spirit, or rather a kind of rage, that put it self forth beyond the ordinary temper of his mind. Much of this mischief was imputed to *Wickliff's* Doctrine; for it is an ordinary thing to proclame all evils, concurring with the very joynt of Reformation, to be the proper fruits thereof; but I look upon it as a fruit of corruption that endeavours to stop the breath of Reformation in the birth; and there is somewhat of a hidden influence from Above in the thing; for it was not only the Cup of *England*, to be thus troubled,

*Hist. Eccles.  
Ang.*

*Antiq. Brit.* troubled, but France and other places had their portion  
262. suitable.

The King's minority rendred him unequal unto these contrary motions; he was in his eleventh year, when he entred the Throne; and (which was worse) his years came on faster than his Parts, but his work posted before them all. The common help of Protectors left him yet more unhappy, for they were prepossessed with strong engagements of particular Interests; and so were either not wise enough, or not good enough for all. This brought forth a third inconvenience, the change of Protectorship; and that change of Affairs and Interests, an uncertain good that brings forth a certain evil; for variety of Instruments and Interests move several ways, and though the end be one; the difference concerning the way, many times doth as much hinder the Journey, as so many blocks in the way.

The Protectorship was thrice changed, the King's Uncles had the first essay; any one of them was big enough for one Kingdom, but all of them together were too great to make one Protector. The Duke of Lancaster would have done well alone, if he had been alone, and that work alone; but he being somewhat engaged with the *Wickliffists*, and so entangled with the Clergy, and other restless spirits, and drawn off by his private aim at the Crown of *Castile*, saw this work too much, and so he warily withdrew himself, leaving the Directory to a Committee of Lords, a soveraign Plaster, questionless, where the times are whole, but not for these distractions, wherein even the Committee it self suffered it's share: Thus the breach is made the wider; and for a cure of all, the Government is committed into one hand, wherein the Earl of *Warwick* acquitted himself well, for he was wise enough to observe such as the people most honoured: And thus passed over the two first years of the King's Reign.

The remainder of the King's minority, was rather in common repute than in true account: For the King, how-  
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ever young, took little more from the Protector, than he saw mete to colour his own commands with opinion of Regularity; and so his will came to full strength before his wisdom budded. Thus lifted up, he sets himself above all interests of Parliament, Protectors, Counsellors, Unkles, wife Men, and Law; leaving them all to be rules for those below. And so long as the King's desire is thus served, he is content to be reputed a Minor, and be as it were under protection of others, though not under their direction; and is content to continue thus until his two and twentyeth year: Some might think him very moderate, had he been moderate; but he forbears suing out his Livery so long as he may live without care, and spend without controul: For by this time the humour of his great Grandfather budded in him; he pawned his heart to young men of vast desires, and some say so inordinately, as he prostituted his Chastity unto them. And it's no wonder if the Revenues of the Crown are insufficient for such Masters. This the people soon felt, and feared their own Free-holds: for they are bound, saith he, not to see the Crown deflowred for want of maintenance, it's very true, nor to see the Crown deflowred of its maintenance. A Parliament therefore is called; in which diverse Lords associate, and prepare Physick for the King's lavish humour, which being administred, wrought for ten years after, till it had purged him of his Life, and the Kingdom of their King.

11 Rich. 2. m.  
8. 13.

It was an Act of Parliament that gave power to fourteen Lords and others, to regulate the profits and Revenues of the Crown, and to do Justice to the people; this was to continue for one whole year. The Parasites no sooner found the effect hereof to their Cost, but the King grows sick of it, and finds an Antidote to over-rule Acts of Parliament, by Acts of Privy-Council, declares this ill-favoured Commission void; and the Contrivers, Advisers, and Enforcers, Traytors. To make it more Majestical, he causeth the Judges to Subscribe this Order, and so it becomes Law in repute. This foundation thus laid, he buildeth in hast an Impeachment of these Commissioners of High Treason; and

supposing that they would not readily stoop, himself stoops lower; for he would put his Right to trial by battel, which was already his own, by the judgement of the Masters of the Law: For so, they may be well called, seeing they had thus Mastered it. In this the King had the worst, for he lost his Honour and himself: (God hath a care of common right even amongst Idolaters.) Then comes the Parliament of Wonders, wherein the King's Party are declared Traytors, and the chief Judges with their Law, judged by another Law. The King not medled with, thinks it high time to come out of his Minority, and assumes the Government of the Kingdom and himself, to himself, being now three and twenty years of Age; old enough to have done well if he had cared for it: But resolving to follow the way of his own will, at length it led him to his own ruine: only for the present two things delayed it, *Viz.* The Authority, Wisdom, and Moderation of his Uncles, especially of the Duke of *Lancaster*, now come out of *Spain*; and the great affection which the King pretended to the Queen, who had also gained a good opinion amongst the People: The benevolent aspect of the People, not for their own advantage, but for the Publick quiet, procured many Parlies and interviews between the King and People, and many Laws for the upholding of the Court and Government; although both War, Laws, Justice, and Councils, all are faint, as all is faint in that man that hath once dismanned himself. This he perceives well enough, and therefore Peace he must have by any means. The Queen dies, himself being nigh eight and twenty years old, takes a Creature like a Wife, but in truth a Child of eight years old, and this is to get Peace with *France*. It's no wonder if now he hunts after unlawful game, and that being ill taken, brings all things out of order (*For abused Marriage never wants woe:*) Civil men are now looked upon as severe *Cato's*; and his Uncles, especially the Duke of *Glocester*, with a jealous eye, which accomplished his death in the conclusion. The Dukes of *Lancaster* and *York*, forsake the Court, Fa-  
vourites



yourites step into their rooms : The old way of the eleventh year is re-assumed ; *Belknap* and others are pardoned, and made of the Cabinet. The pardon of the Earl of *Arundel* is annulled, contrary to the advice of the major part, and the Archbishop, the Earl's brother is banished. The Lords forsake the wilful King, still the King's Jealousie swells ; The Duke of *Hertford* is banished, or rather by a hidden Providence sent out of the way for a further work. The Duke of *Lancaster* dies, and with him all hope of moderation is gone, for he was a wise Prince, and the only Cement that held the joyns of the Kingdom in correspondency. And he was ill requited, for all his Estate is seized upon. The Duke of *Hertford*, and his party are looked upon by the people as Martyrs in the Common Cause, and others as Royalists ; Extremities hasten on, and Prerogative now upon the wing, is towering above reach. In full Parliament, down goes all the work of the tenth and eleventh years Parliament, which had never been, if that Parliament had continued by adjournment. The King raiseth a power, which he calleth his Guard, of *Cheshire*-men ; under the terrour of this displaying Rod, the Parliament and King-<sup>21 Rich. 2.</sup> dom are brought to Confession : *Cheshire* for this service is<sup>cap. 9.</sup> made a Principality ; and thus goes Counties up, and Kingdoms down. The King's Conscience whispers a sad message of de-throning, and well it might be, for he knew he had deserved it. Against this danger he intrenches himself in an Act of Parliament, That made it Treason, *To purpose and endeavour to depose*<sup>21 Rich. 2.</sup> *the King, or levy War against him, or to withdraw his Homage,*<sup>cap. 3.</sup> *hereof being attainted in Parliament.* And now he thought he was well guarded by Engagement from the Parliament, but he missed the right Conclusion for want of Logick : For if the Parliament it self shall depose him, it cannot be made a Traytor, or attaint it self, and then hath the King gained no more than a false birth.

But the King was not thus quiet, the sting of guilt still sticks within, and for remedy he will un-law the Law ; and gets it enacted, that all procurers of the Statute of 10 *Richard* the Second, and the Commission and procurers of the King's

assent thereto, and hinderers of the King's proceedings are adjudged Traytors. All these reach only the branches, the root remains yet, and may spring again; and therefore in the last place, have at the Parliament it self: For by the same it's further declared, That the King is the sole Master of the propositions for matters to be treated in Parliament, and all gain-sayers are Traytors.

Secondly, That the King may dissolve the Parliament at his pleasure, and all gain-sayers are Traytors.

Thirdly, That the Parliament may not proceed against the King's Justices, for offences by them committed in Parliament, without the King's consent, and all gain-sayers are Traytors. These and the like Aphorisms once Voted by the *Cheshire-men*, assented unto by the Parliament, with the King's *Fiat*, must pass for currant to the Judges, and if by them confirmed or allowed, will in the King's opinion make it a Law for ever, That the King in all Parliaments is, *Dominus fac primum*, and *Dominus fac totum*. But the Judges remembered the tenth year, and *Belknap's* entertainment, and so dealt warily; their opinion is thus set down, *It belongeth to the Parliament to declare Treason, yet if I were a Peer, and were commanded, I should agree*: So did *Thorning* under-write, and thereunto also consented *Rickill*, and Sir *Walter Clopton*, the last being Chief Justice of the King's Bench, the first Chief Justice of the Common-pleas, and the second another Judge of the same Bench. The sum in plainer sence is, that if they were Peers, they would agree; but as Judges they would be silent. And thus the Parliament of *England* by the first of these four last mentioned conclusions attainted themselves; by the second yielded up their liberties, by the third their lives, and by the last, would have done more, or been less: And to fill up the measure of all, they assigned over a right of Legislative power unto six Lords, and three Commons, and yet the King not content, superadded, that it should be Treason for any man to endeavour to repeal any of their determinations.

The Common-wealth thus underneath, the King tramples upon.



upon all at once ; for having espyed the shadow of a Crown fleeing from him in *Ireland*, he pursues it, leaves the noble Crown of *England* in the base condition of a Farm, subject to strip and waft by mean men ; and crosses the Irish Seas with an Army. This was one of *England's* Climacterical years, under a disease so desperate, that no hope was left but by a desperate Cure, by sudden bleeding in the head, and cutting off that member that is a principle of motion in the Body : For it was not many Months e're the wind of affairs changed, the King now in *Ireland*, another steps into the Throne ; the noise hereof makes him return, afar off enraged : but the nigher he comes, the cooler he grows, his Conscience revives, his courage decays, and leaving his Army, his Lordship, Kingdom, and Liberty, behind, as a naked man submits himself to release all homage and fealty ; to resign his Crown and Dignity, his Titles and Authority ; to acknowledge himself unworthy and insufficient to Reign ; to swear never to repent of his resignation ; and thus if he will have any quiet, this wilful man must be content for the future, neither to will nor desire : And poor *England* must for a time be contented with a doleful condition, in which the King cannot rule, and the Parliament will not, and the whole body like a Chaos capable of any form that the next daring spirit shall brood upon it.

## CHAP. II.

*Of the State of the King and Parliament, in relation of it to him, and him to it.*

A King in Parliament is like the first-born of *Jacob*, *The excellency of Dignity, and the excellency of Power*, but alone unstable as water : Examples of both these we have in these two Kings, *Whereof the first was Crowned by the Parliament, and Crowned it ; the latter also Crowned it, but with Thorns,*

Thorns; and yet the Parliament in all held on that wise way, that it neither exceeded its own bounds, nor lost its own right.

I shall enter into the consideration of particulars under these heads: First, *In relation more immediately to the interest of the Kings*; Secondly, *To the interest of the Kingdom in general*. The King, though higher than all the people by the head; and so hath the Prerogative of Honour as the most worthy, yet his strength and abilities originally do rise from beneath, otherwise, he is but like a General without an Army, the Title big, but aery; and many times his person subject to so much danger, that instead of drawing the eyes of all the people to look upon him with admiration, they are drawn to look to him with observation, and in this respect he may be said to be less his own man, and more the Kingdoms than any of the inferiour sort. This befall in both these Kings in a special manner; each entering upon the grand government of a Kingdom before they were able to understand the work, or govern themselves: and therefore were under power of Protectors for the guard of their Persons and their Education, and of the Parliament for Counsel and Direction in Cases relating to the Kingdom. The child of a mean man when its Parents are dead, is *Filius Amici*, but of a King is, *Filius Populi*, to be by them trained up in such manner, that he may be *Pater Populi*, when he is come to age. In the mean time though he be a King, yet his Person like a precious Jem must not out of the Ring, but must be directed by Council, though under some kind of restraint, and the Counsellors all the while no Offenders in such Cases against the Prerogative Royal. And therefore though it be true, that Kings grow faster than other men, and sooner come to full age than they, yet *Edward* the third, now in his sixteenth year might not pass over Sea into France, though it were for restoring of peace, but by direction of the Parliament; nor is it meet in such Cases, that Kings should stand upon the Prerogative of a Negative. Secondly, it may likewise be said, that his Family is less his own, as he is a Man, than another mans. For private Families are no further under the publick Law, than

1 E. 3. Stat. 1.

in relation to the publick peace, to punish after breach made. But the Families of Kings are looked upon by all in relation to the honour and profit of the publick; not only because the King's servants have by their high attendance upon his person, a more powerful influence into his actions, which may reflect a malevolent aspect upon the whole course of affairs, if they be not better ordered than are so high him. But more especially in regard that the government and order of the Royal Family, trencheth deep upon the Honour of the Kingdom; and purses of the people, who are concerned to see the same accommodated suitable to the State and Port, which the Nation would bear forth to the World. And therefore for the Parliament to intermeddle in the King's Family, is not Foreign nor new: *Alice Piers* was a Familiar, if not of the Family of *Edward* the third, yet both her self, and others of that Family were complained of as a grievance. *Richard* the second, was once a young man, and ever a young King; and what *Edward* the third wanted only in his youth, and in his infirm old Age, this man ever wanted: for he that knew not how to govern himself, how much less could he govern his Family? And if in this condition the Parliament become his Stewards, to set a yearly Survey and Check upon his Servants and Family, in order to good order of the same, and Kingdom, other wise men must conclude, it did that which was just: though *Richard* the second, and those of his mind think not so. But this is not all; Kings have not only such as serve the outward man, but some that serve their Consciences, of old time called Confessors; in these days without name, for fear of Superstition, yet the thing remaineth still in some well favoured Chaplain, and their work is to lead the King's Conscience in dark ways, or rather into them; commonly he hath a devout outlide, and that is the King's Idol: but if while his eye be towards *Jerusalem*, his mind be towards the dead Sea, the King is his; and then the blind leads the blind: Like some *Ignis fatuus*, to such as know it not: No man is so well known by his company as Kings are by these men, and these men

9 *Rich. 2. n.*  
11 *Rich. 2. n.*  
23.

§ Rich. 2. n.  
17, 18.

men by their Actions. Although some have been so witty as to cheat the whole generation of Mankind, by entertaining holy men to be their Chaplains : themselves the mean time, without any spark of that holy Fire. Yet this King was not so cunning, he had a Confessor of his own choice, and according to his own heart, who was complained of as a grievance, and the Parliament removed him : So nigh they adventured, even to invade the King's own conscience, if it may be called conscience, that will acknowledge no Law, but that of its own mind.

Thirdly, The King's Revenue was under the check and control of the Parliament, for it befalls some Princes, as other men, to be sometimes poor in abundance, by riotous flooding treasure out in the lesser currants ; and leaving the greater channels dry. This is an insupportable evil, because it is destructive to the very being of affairs, whether for War or Peace. For the King's Treasure is of a mixt nature, much of it being intended for publick service, as himself is a publick person. And for this cause he hath Officers of several natures attending upon this Treasury. Some for Land, some for Sea, some for the general Treasure of the Kingdom, some for that of the household, and some for the privy purse : the common end of all, being to maintain state in time of peace, and strength against time of War : because it's no easie matter to maintain the just proportions for each of the said ends, it is the less wonder that such a brave Prince as *Edward* the Third should labour under want for maintenance of the Wars : and so lavish a Spendthrift as *Richard* the Second ; should labour under more want to maintain his port and countenance in peace. And therefore, though it be true, that the publick Treasure is committed to the King as the chief Steward of the Realm, yet it is as true that he is but a Steward ; and that the Supreme survey of the Treasure resteth in the Parliament, who are to see that the Treasure be not irregularly wasted, to reduce the same into order ; and for that end to call the Treasurers and Receivers to account, to see to the punishing of such as are unfaithful, and

and encouraging of others that are faithful; for when by extravagant courses, the Treasure is wasted; by extraordinary courses it must be supplied, which ever is out of the Subjects purses. And in such cases it is great reason that they should observe which way the course lies of such expences. If then in such cases, sometimes the Parliament hath stayed the issuing out of the King's Revenue for some time, or otherwise viewed and examined the same, charged it with conditions, 22 E. 3. n. 29. 14 R. 2. n. 15. limited it to certain uses, and in case of misuser refused to levy or make payments, the case will be without dispute, that the Parliament ordered the publick treasure as they saw most need. But much more if we consider how the greatest part of this Treasure was raised, *Viz.* Not from the old Revenues of the Crown, but by new impositions, levies, and assessments, laid upon the people, even what they pleased, and in what manner they thought meet, and not otherwise. Aids are lawful if they be legally given by common consent of Parliament: Taxes if legally given by Parliament, are no less lawful, yet they must be collected in such manner and by such means as the Parliaments Order doth direct: Loans of money to the King may be made by them that will, but the King must not demand them, because the Subject hath no means to recover the debt. This trick had been lately tryed by Edward the Second, much money he got, and it was repayed by the order of the Parliament. But of all the rest, nothing shewed more absolute Authority in the publick Revenue, than the care that was had of the Demesnes of the Crown, for whereas the expences of Kings grew so vast, that neither the yearly Revenue could suffice, nor Aids, Assessments, and Taxes could satisfie, however ordinary they in these times were become; rather than Kings would contain themselves they would invade their own Demesnes, by pawning, selling, and giving them away, either for love or money; and thus was poverty treasured up against the future, both for King and Crown. The Parliament espying this leak that was like to undo all, applyed a speedy remedy, undoing what was

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done,

<sup>2</sup> Rich. 2. n. 12.

<sup>9</sup> Rich. 2. n. 4. or 41.

<sup>14</sup> E. 3. n. 6.

<sup>27</sup> E. 3. n. 8.

<sup>9</sup> R. 2. n. 40.

<sup>15</sup> E. 3. n. 16.

<sup>14</sup> E. 3. cap. 10

<sup>25</sup> E. 3. n. 16.

<sup>1</sup> E. 3. c. 1.



done, and undoing some by an Act of Resumption, and thereby taught Kings to look to their honour better for the future ;  
 1 Rich. 2. n. 48. and people also to take heed of meddling with such considered matters, and to know that he that hath such in his possession, hath them by a crack'd Title that cannot be amended but by Act of Parliament.

Fourthly, an English King is no Out-law, nor can he do any wrong, though the man may : he hath a double relation, one as a King, the other as a Man, and the uniting of both in one person, hath cheated many a man of his Judgement in the Case of prerogative : he hath a double will, and these many times contrary, equally as in other Relations ; and in this contrariety, sometimes the King overcomes the man, and sometimes the man the King ; so as if any man, the King hath much more cause to cry out, *O miserable Man* : These divers wills are generally led by diverse rules : One of a man, which many times reacheth no higher than the Affections, and if the man be weak, they deserve little better name than Lusts. The rule of a King is Law, or Councils, of these in place ; and unto these in all prudentials, he must submit his judgement and will, as he is a King : nor can he do otherwise : unless he will presume to be wiser than his Council : Suitable hereunto doth that clause in one of the Statutes of these times conclude, *Viz. That the King is bound by his Oath, to pass all Laws that are for the good of the Kingdom* : For were the power of election, or determination of the point only in the King, then were the Oath in vain, nor is the Parliament at all (in case of the King's dissent) to judge of the convenience or inconvenience of proposals made for the good of the whole body, according to that power which is exercised in these times : Nor is it rational to infer here from that, if Law and Council be the rule of a King, then the obedience of the people unto this King must be in order to Law and Council, otherwise the disobedience cannot be determin'd to be against the King, but against the Man ; and though against the private will of the Commander, yet not against the Law, nor therefore can it be said illegal :

25 E. 3. Pro-  
viser.

21 E. 3. n. 64.

3 Rich. 2. n. 38.

2 Rich. 2. n. 38.

legal or unjust. The Parliament in these times held forth this Doctrine plainly to the World, that it is their proper work in Cases needful to do right to such as are wronged by the King: his command is no Warrant in such Cases. If a man be wrongfully imprisoned by him, he shall be released and set at liberty by them: Let his Act be never so authentic under the Broad Seal, it can take no man's right away. *Richard* the Second, did his utmost to satisfy and quiet the tumultuous Rabble under *Cade* and *Straw*; and granted fore of Manumissions to the Bond-men by Declaration, and by his Letters Patents, but not one of them good enough to deprive any one of the meanest of the Free-men of their rights in those Bond-men. The privilege of shewing mercy, and granting pardon hath been anciently entrusted to the King, as an Overseer of the execution of Law, yet he hath not that Prerogative, To have mercy on whom he will have mercy. Ever since this Nation had learned to read the Bible, Murther hath been excepted from mercy, nor did the Law ever allow any King any Prerogative to pardon that. *Edward* the Third, did not challenge any such, not only bound thereto by his Coronation-Oath, but by publick Acts of State, declaring the same; yet because the Parliament was not always sitting, and Kings were ever subject to this Temptation, to favour Servants, by granting mercy to Malefactors; a general rule of Inhibition is made against all pardon to be granted by the King, in Case of Felony, but only in Cases allowed by advice of the Council. It's true, that in the first times of *Richard* the Second, he liked not to be thus girt in his power, which he pretended was more at liberty in his Predecessors; possibly he meant King *John*, and *Edward* the Second, who many times did what they listed; yet under his favour, no Law was so shameless, as to hold forth such a power, till *Richard* the Second's Law countenanced it: But why do I call it a Law, which is only a Declaration by consent of the Lords, such as then were: the Commons would never own such an opinion; and therefore it soon proved abortive; for within three or four years, by pub-

15 E. 3. n. 6, 7.

1 E. 3. 1st. 1.

15 E. 3. cap. 3.

11 Rich. 2. n.

11, 12, 15, 17.

5 Rich. 2. n. 8,

12, 13.

10 E. 3. cap. 2.

14 E. 3. c. 15.

2 E. 3. cap. 2.

13 Rich. 2. St.

2. cap. 1.

11 Rich. 2. n.

3. 6.

21 Rich. 2. n.

35.

lick Act of Parliament, it's peremptorily declared, that the King's pardon shall not extend to Murder: So as upon the whole matter it is plain, that it is not the King's will, though supported by the Council of Lords, and backed by the opinion of the Judges, that must be a rule for the government of this Kingdom, nor doth any Allegiance bind obedience thereunto, in Case where Justice, or the liberty of the people is concerned.

Three things yet remain which Kings have claimed to be their own, *Viz. Conferring Titles of Honour, and Places of Trust, and the Legislative Power.* The first is but a Feather, and not worthy of regard, yet it is plain that these times produce many precedents of Dukes, Marqueesses, and Earls, made in Parliament, and possibly it may be apparent that the first motion of any such Title of Honour, did first fetch it's Original thence, if not in the Field. But it's not worthy of the labour. The second is more considerable, *Viz. The power of conferring Places of Publick Trust:* This, Kings have pretended unto, although in course of Congruity, it will be thought more meet, that it belongeth rather to that chief and grand Trust of the whole Kingdom committed to the Parliament; and the practice of these times is not much discrepant, whether we regard such as are for advice, or execution. Of the first of these, are those whom we commonly call, the Privy Council, whose advice in course toucheth first, upon the King's Person, but by reflexion worketh strong impressions upon the people, so far as the influence of the King's power extends. And therefore it's not beyond the Sphear of the Parliament to interpose and qualifie that influence, so as it may be for the general good of the whole Kingdom: For many times Kings are either above or beneath themselves; and in such Cases, if the Council be of the King's suit, he is of the deeper die, and proves more Malignant to the people. *Edward* the Third, growing into great opinion in the World, his proportion exceeds his own portion, and the peoples good wills to boot; they think the fault is in the Privy-Council, and an Inquisition, set upon it: So also they do in his fifty-eth.



eth year, when he grows downward. And the like in the beginning of *Richard* the Second's Reign, he being now a Youth, and therefore unstable in his Resolutions, and unable to make Election: So as upon the whole matter, if the King fall short in point of Judgement, or Resolution, or inordinate in his affections: But more especially where they observe the Major, or more considerable part of the Council to draw towards a design; in such Cases as these, the Parliament as it's own duty, undertook to settle a good Council about the King's person, that might advise him during their Recess. For the Privy-Council is never more it self, then when it is an Epitome of the Common Council of the Kingdom. In like manner such Officers as concern Execution of Law, and Counsel, are as narrowly to be enquired into: for if their motion be irregular, it's less material what the rule be: the Parliament therefore held it their duty to interpose in the Election of grand Officers of the Kingdom; such as are the Chancellors, Judges, and Justices, or to confirm or displace them, or bind them by Oath; the Rolls of the eighth, fourteenth, fifteenth, and thirty-sixth years of *Edward* the Third, and the sixth, tenth, and eleventh years of *Richard* the Second, do manifest this sufficiently.

50 E. 3. n. 10.

1 Rich. 2. n. 51

3 Rich. 2. n. 34.

5 Rich. 2. n. 17,

18, 28.

6 Rich. 2. n. 19

I have done with the Subject matter, or work of the Parliament in the mutual Relation of the King and it, the manner of proceeding was either joyntly with the King, or without him; and either joyntly with the two Houses, or severally; and either immediately by themselves, or their Committees. As touching the first, it's evident, that in all matters whercin gain ariseth to the Crown from the people, by Subsidy, or otherwise, the strength of the Grant by Act of Parliament resteth in the two Houses, and that the King's Assent is but *Pro forma*, as touching that matter; and therefore such Grants have been made as tended in some measure to derogate, either from the King's wisdom, care, or fidelity, yet even these have passed with the Royal Assent, though the full Assent, or good will of the Person of the King was not.

not correspondent thereto : as in these Cases formerly noted, where Subsidies were given with Limitations and Conditions, and upon rendring account to the people. And it is as evident, that where the King's Person is disabled to understand (as in Case of Infancy) there the Royal Assent can bear little weight with it; but most of all in the King's absence, where either the Assent is put thereto by Commissioners, that know not the King's particular mind, or the Act is done only by the Houses, in nature of Ordinances; and yet these of force to bind all parties, but the King. But nothing more debased the Royal Assent in these times, than a trick that *Edward* the Third plaid in the midst of the fullest strength of his Government: It was in time of War, which never is time of good Husbandry and laying up, nor of sober advice in laying out, nor of equity in levying and collecting money for the nerves of War. This forward Warriour in the heat of his Achievements, finds his strength benumbed for want of money, he leaves off, comes home, rages against his Arch-Bishop, to whom he had committed the care of provision for his War, and the Arch-Bishop, as hotly falls upon some of the Treasury in the Army on the one side, and upon others in the Countrey; whose oppressions, saith he, instead of bringing in money, made the people to give a stop thereto. A contest hereupon thus had, it was concluded by the power of the Parliament, that such men should be questioned, and that the Parliament from time to time should call all Officers of State to account, and thereupon ensues a calm. After the Parliament ended, the King repeats the matter, it makes his heart sick, he disgorgeth himself by a proclamation made by advice of Nobles, and Wise Men, as he saith, and tells all the World he dissembled with his Parliament, and what he did was done by duress of mind, to please for the time, and to gain his ends, which being now had, he by his proclamation revokes what he had done in Parliament, or endeavoured it: And thus is *England* put to School to learn to dissolve three hard knots: First, *Whether a King can dissemble with his Parliament.* Secondly, *Whether Edward the Third*

37 E. 3. n. 34.

1 Rich. 2. n. 5.

5 Rich. 2. n. 75

15 E. 3. c. 3.

*Antiq. Brit.  
Eccles.*

15 E. 3. 50.

*Third his dissembling assent makes a Law?* Lastly, *Whether by a Proclamation, by advice of Nobles and Wise Men, he can Declare that he dissembled with his Parliament, and therein not dissemble the Royal Assent, so as to bring all the Laws made in any Kings time into question, at least during his Life.* However the result may be, it's evident the Royal Assent gets no honour hereby, and the Statute as little, that hath suffered this proclamation all this time to pass among the number of the Statutes in Print as a Law, when as many Statutes that are Laws of note are left out as useless.

Although in the general, the two Houses joyned in every Act, *Ad extra*, yet, *Ad intra*, and in relation one to another, they had their several operations, the House of Commons intermeddled more in the matter of Fact, the House of Lords in matter of right, although in either of these there is a mutual Aspect from both: In matters of Judicature, much rested with the Lords, and therefore it is ordained, that, *The House of Lords shall remedy all offences contrary to the Law of Magna Charta*: And in cases where no remedy is left, nor judgement by the Law, the matter shall be determined in Parliament, and the King shall command execution to be done according to the Judgement of the Peers: Which Laws seem to be but declarative of the former Law, and in the nature of reviving that power into Act which was formerly laid asleep, and doth strongly imply that the ultimate Act in Judicature rested with the Lords, in relation not only to the House of Commons, but also in relation to the King, whose work in such cases, is, not to judge above or with the Peers, but to execute their sentence; and that carries with it a list, whereby the power of a King may appear not to be so supreme in making of the Law, as some would have it: for if his Judgement and Conscience be bound by the Votes of the Peers in giving a Law, in case of a particular person, where the Law was not formerly known: Let others judge of the value of this Negative Vote, in giving Law to the whole Kingdom. It's true, that this Parliament was quarrelled by the King, and he kept it at a bay by a proclamation

14 E. 3. cap. 5.

clamation that pretended Revocation, as far as a Proclamation could revoke an Act of Parliament; but it effected nothing, nor did the contest last long: Now though this Jurisdiction thus rested in the House of Lords, in such Cases, as well as in others; yet is it not so Originally in them, as to be wholly theirs, and only as they shall order it; for the Commons of England, have a right in the course and order of Jurisdiction, which (as the known Law) is part of their liberty: and in the speedy execution of Justice, as well as they have right to have Justice done: and therefore, whereas in Cases of Error, and delays, the Appeal was from the inferiour Court to the Parliament, which immediately determined the matter, and now the trouble grew too great by the encrease of pleas: For remedy hereof, a kind of Committee is made, of one Bishop, two Earls, two Barons, who by the advice of the Chancellor, Treasurer, and the Judges, shall make good judgement in all Cases of Complaint of delay in Judgement, which Committee is not made by Order of the Lords alone, which they might have done in case Jurisdiction had been wholly and only shut up in their custody, but by Act of Parliament, and joyned concurrence of the Commons with the Lords: For as the Commons challenge speedy Execution of Justice, as one of their liberties: So also to be under the Jurisdiction of such Judges, and Courts, as the Laws (in the making whereof, themselves challenge a Vote) do establish and appoint.

I will conclude this Chapter with the Constitution of the Parliament in these times. For, the difficulties that befel between the Kings and their people, or Houses of Parliament, wrought two sad effects, *Viz.* A propensity to decline calling of Parliaments, so often as was used and expected; and when it assembled, as great a propensity in the Members to decline their attendance, by means whereof; as the Historians tell us, the Parliament was sometimes enforced to adjourn it self for want of number sufficient: the first of these arose from want of good will in the Kings, the other from want of courage and zeal in the people. The first of these was fatal and destructive to good Government; for though in distempered

Walsing.

An. 1315.

distempered Parliaments it's good to withdraw, yet in distempered times it's necessary to meet, and gain a right understanding of all parties; and therefore these times were so happy as to bind themselves by publick Acts of State to continue the Assembling of Parliaments. For the face of the Times represented unto all, that Agitations were like to be quick, violent, and to continue for some succession of Time: It's therefore safe, if not necessary, that every eye should be open, and Counsels ready for every Occasion. A Law at length is agreed upon, that *A Parliament shall be holden once every year, or more if need be.* But in thirty years the power of this Law is wasted out of mind, and the evil reviving, revives also the Statute, and yet they had thirteen or fourteen Parliaments in thirty years space, and not above three, or but once four years distance of time between any two of them in Succession. This was the fence of the Members of the Houses in their meeting, but at home, they had comely conceits; and it's found no less difficult to bring them to the meeting, than to continue the meeting according to the Law, being either loath to adventure their thoughts into the troublesome affairs of the publick, or their persons to expence and hazard. But the publick must be served, and therefore an Act of Parliament is made, *That all such Members as decline their appearance at the Parliament, after Summons made, shall be amerced, and the Sheriffs likewise that shall neglect return of Summons.* And the Statute implyeth that it was no introduction of a new Law, but a reviving of former Law now or lately dilated as a Custom now out of Custom. And to take away all Objection in point of charges and expences, another Law was made to establish the assessments, and levying of their Wages, upon the Lands that anciently were chargeable therewith, in whose hands soever the same shall come to. *12 Rich. 2. c. 12.*

I shall conclude with this, that the Parliament, though like a Garment, it sometimes covers the goodly feature and proportion of a well composed body, yet it keeps the same warm; and as a Shield is first in all dangers, and meets with

with many a knock which the body feels not : This is their work and reward ; It's true, that in the wearing it is felt heavy, but it is the easier born, if it be duly considered, that it is better to be so clothed, than to be naked.

### CHAP. III.

#### *Of the Privy Council, and Condition of the Lords.*

**T**He latter must make way for the former, for according to their personal esteem in their own Countreys, such is their Authority at the Board injoynt Councils : And it was one point of happiness in a sad time of War, that all men looked one way. The Lords were much addicted to the Field and could do much with *Edward* the Third, who was a brave Leader, and more with the people, who had been so long time used to the rough Trade of Soldierie, that they loved not to be at home about matters of Husbandry, wherein they had so little experience. And having so fair a Garland in their eye as *France*, it's no wonder if Domestick designs seemed meaner, or more dangerous. Thus did God do *England* a good Turn, although it was made for the present thereby, neither so rich or populous, as it might have been in a time of peace. This French heat wasted many a tumultuous Spirit, and Ennobled the Fame of the King and Lords, not only abroad, but won them much Honour and Repute of those that remained at home ; and so by congregating Homogeneous, and severing Heterogeneous, rendered the body of the people more Univocal ; which tended much to the settling of the joints of this distracted Nation. A timely birth hereof, doubtless was the peaceable entry of *Richard* the Second, upon the Throne ; and quiet sitting there ; whilst as yet he was but a Child, the Princes of the blood many ; and they of Generous, Active, and daring Spirits : yet do we not meet with a whisper in Story of any turbulent

or aspiring humour in them or the people, during those tender times of that King's Reign. But after that he came to know more in himself than was to be found; and to out-rear his abilities, having some of the Lords ready at his elbow to help him: these changed the King's course, although the general part of that Noble Band kept still their Array; and retaining the body of the people in due composure, thereby declared themselves to be the King's Friends, though the others were *Richard's* Favourites, so as he was fain to stoop to occasion, and submit to be a King, that would have otherwise been more or less. And thus the Lords were become Supporters to the Crown, Studs to the Throne, and a Reserve to the people, against the violent motions of an unbridled mind in their King; who seeing them so united, and endeavouring to break them into parties to obtain his desire, lost both it and himself. It is a degree of cleanly modesty to impute the miscarriages of unruly Kings, to their Council: For however during their minority, Counsellors are more rightly Officers of State; yet when Kings will be their own Men, their Counsellors are no other than the breath of the King's own breast; and by which a King may be more truly discerned than any man by his bosom Friends. *Edward* the Third, was a man of a publick Spirit, and had a Council suitable to his aim: *Richard* the Second, a Man that desired what him pleased, would have what he desired; and a Council he had that served him in all: for God answers the desires of Mens hearts in Judgement as well as in Mercy; and a sore Judgement it is both to King and people, when the corrupt desires of the King are backed by a flattering Council.

It must be granted that the Privy Council of Kings, hath been an old ginn of State, that at a sudden list could do much to the furthering of the present Estate of publick Affairs: Nevertheless, through the Riot of Kings, their Designs generally tended to make more work for the Parliament than to dispatch; to do much, rather than well; like works for sale, rather than for Master-piece, and some-

times to undermine, yea, to out-face the Parliament it self, like some unruly servants that will put away their own Masters: Nor can it otherwise be expected, unless the King's elected ones be turned into the Parliaments Committee; or that constant annual Inquisition by Parliament, be made into their Actions: for occasional inquiries breed ill blood, though no attainder be; nor are they easily undertaken, whereas constancy in such Cases makes the worst to be resolved but into a matter of common course.

The natural and original power of the Privy Council, is very obscure, because there are several Degrees of them that occasionally have been used, all of whom may deserve the name of Privy Council, in regard of the Parliament, which is the most publick Council of all the rest, and always hath a general interest in all Causes in the Kingdom.

The first of these, is that which was called, *The Grand Council of the King*, which as I think, was not the House of Lords, who are called by Summons, and were only to attend during the Parliament; but a body made up of them, and other wise men of his own retinue: and of this it seems there was a constant body framed, that were sworn to that service; for some in these times were sworn both of the Grand Council, and the Privy Council, and so entred upon Record.

The second of these Councils was also a great Council, and probably greater than the other; but this was called only upon occasion, and consisted of all sorts, like a Parliament, yet was none: An example whereof we have in the Ordinances concerning the Staple, which at the first were made by the King, Prelates, Dukes, Earls, Lords, and great Men of the Kingdom, one out of every County, City and Burrough, called together for that end; their results were but as in point of trial for six months space, and then were turned into Statute-Law by the Parliament. These two are *Magna Concilia*, yet without power, further than as for advice; because they had no ancient foundation, nor constant continuance. Another

16 E. 3.  
Memb. 5. in  
Dors.

27 E. 3. Stat. 2

28 E. 3. c. 13.



ther Council remaineth more private than the other, of more continual use, though not so legally founded, and this is called the King's Privy Council, not taking up a whole House, but only a Chamber, or a Table, signifying rather communication of Advice, than power of Judicature, which more properly is in *Banco*: And yet the power of this grew as virile and Royal, as it would acknowledge no Peer but the Parliament, and usurped the representative of it, as that had been of the whole Kingdom. The ambition thereof hath ever been great, and in this most notoriously evident, that as it had swallowed up the grand Council of Lords, it seldom can endure the mention of a Parliament, but when Kings or Affairs are too rugged for their own touch. The platform of their power you may behold in this their Oath.

1. *That well and lawfully they shall counsel the King according to their best care and power, and keep well and lawfully his Counsels.* *Mag. Charta. Vet.*

2. *That none of them shall accuse each other, of any thing which he had spoken in Council.*

3. *And that their lawful Power, Aid, and Counsel, they shall with their utmost diligence apply to the King's Rights.*

4. *And the Crown, to guard, and maintain, save, and to keep off from it, where they can without doing wrong.*

5. *And where they shall know of the things belonging to the Crown, or the Rights of the King, to be concealed, intruded upon, or subtracted, they shall reveal the same to the King.*

6. *And they shall enlarge the Crown, so far as lawfully they may, and shall not accounsel the King in decreasing the Rights of the Crown, so far as they lawfully may.*

7. *And*

7. And they shall let for no Man (neither for love nor hate, nor for peace, nor strife) to do their utmost (as far as they can, or do understand) unto every man in every Estate, Right, and Reason, and in Judgement, and doing Right shall spare none, neither for Riches nor Poverty.

8. And shall take of no Man without the King's leave, unless meat or drink in their Journey.

9. And if they be bound by Oath formerly taken, so as they cannot perform this without breaking that, they shall inform the King, and hereafter shall take no such Oaths without the King's consent first had.

All which in a shorter sum, sounds in effect, that they must be faithful Counsellors to the King's Person, and also to his Crown; not to decrease the true Rights, but to enlarge them, yet all must be done lawfully. And Secondly, that they shall do right in Judgement to take no Fees, nor any other Oath in prejudice of this.

The first of these concern the publick only at a distance, and yet the point of encreasing and diminishing of the Crown in the sixth Section is captious, and may sound as if there is a Legal enlarging of the Crown, whereof he that takes the Oath is to judge. A matter which only and properly concerns the Parliament to order and determine, or else farewell all liberty of the people of England.

The second concerneth immediately the King in his polittick capacity, but trencheth upon all Laws of the Kingdom, in the executive power; and all the motions in the whole Kingdom, either of Peace or War, following in the Rear, either immediately, or mediately, are under this notion interested into the transaction of the Privy-Council, to debate and determine the King's Judgement therein, unless it will determine alone. And how easie a thing it is for such as have power of determining the Action by the Law, to slip into the determining of a Law upon the Action, and so to rule

rule by Proclamation; experience taught succeeding times sufficiently: Nevertheless, these times wherein Parliaments were every moment upon the wing, and kept this Noble Band in awe, by taking them into their Cognisance, placing and displacing some or all of them, directing and binding them by Oath, as they saw occasion, of which the Records are full and plentiful. I say, these times thus constituted added yet further encouragement to them, by giving them powers by Statute-Law, over and beyond what by ancient Custom they had obtained. The King, and Council of Lords had anciently a power of Jurisdiction, that hath been in the first part of this discourse already observed; yet it's very probable, that it was not any select company of Lords, but the whole Association; for it's granted by all, that they had originally a principal hand in the Jurisdiction: And it's hard to conceive how any private number should catch such a power, if not by usurpation. But the manner of acquiring, is less material; the principal consideration resteth upon the quality of this Jurisdiction. For it is evident that much difference hath been, both concerning the place and manner of exercising this Authority. In general, It must be granted, that all pleas, *Coram Rege*, were grounded upon Writs first purchased, and returnable, either in *Banco*, or in *Camera*, or in *Cancellaria*. And no difference at all will be concerning the Jurisdiction in *Banco*, for that was by the Course of the Common-Law; and the people held it one of their liberties to have one known course of Law, for determining matters of right and wrong. As touching these pleas, which were holden by Writs returnable in *Camera*, they were properly said to be *Coram Rege & Concilio*, whose meeting was in the Council-Chamber, in those days called the Star-Chamber. For other returns of Writs in the Star-Chamber do not we find, but such as were in *Camera*, nor prohibitions from thence, but under the notion of the King's Council; and this *Camera*, as I said, was the place of the joynt meeting of the Council, as well of those of the Chancery and Benches, as of those that attended upon matters of State. Now the influence

20 *Ass. pl. 52*41 *E. 3.**Rat. Claus.*16 *Rich. 2.**Memb. 11.**in Dorf.*

influence of Society in point of Judicature, principally aspect-  
ed upon some pleas belonging to the Crown: although  
even these also properly, were determinable in the King's  
Bench; nor can I observe any rule to bound the powers of  
these two Judicatories; but this, that the Council-Table  
would pick and chuse, and prohibit the King's Bench as they  
pleased: and to that end would order Originals out of the  
Chancery, as they thought most meet: for it is observed  
by *Fleta*, that the King's Bench hath no jurisdiction of it  
self; but by special Warrant; that is to say, by Original  
Writs returned thither: Nevertheless, it may seem that  
such Crimes as are contrary to common honesty, or the pub-  
lick profit or peace, in a more exemplary way than ordina-  
ry; and therefore may be called, *Crimina lesi Regni*, or a-  
gainst the State: These, I say, might more properly belong  
to the sublime Judicature of the Council-Table; as knowing  
better how far the publick State was interested, or endam-  
aged in such Cases, than the other Judges that were experi-  
enced only in ordinary matters of a more private concern-  
ment.

To recite the particular Cases upon record, concerning  
racing of Records, Forgeries, and other crimes of falsehood,  
conspiracies, combinations, to abate and level the prices of  
Commodities, Riots, and such like, will be superfluous. In  
all which and others of that Cognisance the Sentence ex-  
ceeded not Fine, and Imprisonment, or Ransom; Neither yet  
were the Common-pleas so rural, but the Council-Table could  
relish them also, and digest them well enough, and therefore  
did not stick to prohibit the Courts of Common-Law, under  
colour of a strange maxim. *That it is neither just nor honest  
for a Man to be sued at the Common-Law, for a matter depend-  
ing before the King and his Council*: No, though the Court  
of Common-Law had the precedency; and therefore al-  
though the right of Tyths being depending at the Com-  
mon-Law, the Arch-Bishop in opposition to the Jurisdic-  
tion; sueth before the King's Council, and the proceedings  
at the Law are thereby stayed; and no wonder, for the  
Council

*Fleta*, li. 2.  
c. p. 34.

38 E. 3. Rot.

Pat. Pf. 1.

Memb. 13.

39 E. 3. Pf. 1.

M. 13.

42 E. 3.

Rot. claus.

Memb. 8. in

Diref.

2 Rich. 2.

Rot. Pat. Pf. 1.

12 Rich. 2.

cap. 12. 43.

Ass. Pl. 38.

Co. Inst. 4. c. 5

22 Ass. pl. 75

Council-Table challenged to hold the ballance of all Courts of Law within their own Order: and so if any doubt concerning the Jurisdiction depended, the Council-Table gave the word, and all stooped thereto: But enough of the Subject matter, the manner follows; a new form of Process is taken up, that the Common Law and ancient Custom never knew, and which grew so noisome to the people, that complaints are made thereof as of common grievance, and remedies are thereto applied by the Laws of these times. For whereas by the Grand Charter nothing could be done in Judgement, but according to the Laws of the Land, and in affirmance thereof, a Law was made in these times, that no Accusation, nor Attachment, nor forejudging of Life, or Member, nor seisure of Lands, Tenements, Goods or Chattels, should be against the form of the Grand Charter, and Law of the Land: the course of affairs grew so stale, that amongst other innovations, a trick of a new kind of Trial is brought forth, by suggestions upon Articles exhibited against any man before the Council-Table; and thereupon issued forth Attachments against the party complained of, by means whereof, and other courses (for they could also sequester) much vexation arose unto the people. Hereunto upon complaints multiplyed, a remedial Law is made; whereby it is Enacted, that all such suggestions made, shall be carried to the Chancellour, Treasurer, and the King's Grand Council; and the Informer shall find surety to prosecute with effect, and to incurr the like penalty intended for the Defendant, if the Plaintiff's proofs be not complete; and then the Process of Law shall issue forth, and the Defendant shall not be taken against the form of the Great Charter; that is, he shall not be taken, until first the fault appear upon Record, by Presentment, or by due Process, or by original Writ, according to the Ancient Law of the Kingdom: Either therefore the Privy Council had no power to hold any pleas at all, or else no power of Trial: The first of these was concluded in open Parliament, and the second, as good as so: for if the first, then the second will come on undeniably. But

13 Rich. 2. 12.  
Tit. Prohibiti-  
on.

5 E. 3. c. p. 7.

37 E. 3. c. 17.

25 E. 3. c. 4, 5.  
42 E. 3. c. 3. 4.

1 Rich. 2. n. 87.



Fabian Vit.  
Hen. 3. Ann.  
1141.

43. Aff. pl. 38.

43. Aff. pl. 38.

suppose all this be given up, yet was this Liberty to hold pleas so qualified, that the person could not be touched, till the thing did appear by Inquisition, and then in a legal way : such proceeding was had upon suggestion made against the City of London, in Henry the Third's time; for one of the Judges was first sent into the City to find the suggestion by a Jury, and then the Lord Mayor appeared before the Lords, and traversed the matter, and in a manner appealed, or rather demanded to be tryed, according to the custom of the City. And the like course do we find observed in our Law-Reports of these times, in a Case concerning the price of Wool, by a false Report. The foot of the whole account will be this, That the work of Judicature of the Privy Council in these times in Cases of Crimes, was to receive Articles, and award Inquisitions, and after return in nature of a Grand Inquest, to recover, Traverse, and to order Trial at the Common Law; and upon Verdict returned, to Fine and Ransom. In other Cases either of Right or Equity in matters of private property, they were determined, either by Judges of the Bench, or Chancery, although possibly the suit was *Coram Concilio*, for that all the said Judges were of the King's Council : And yet, as I dare not affirm, so I cannot deny, but it might also be possible that some matters, especially these of a greater consequence, either in their own nature, or in regard of the persons whom they concerned, were determined by the major Vote of the whole Council, in a prudential, or rather arbitrary way : But this was, *Invita Minerva*, and used so rarely, as the path is grown out of view, saving some few footsteps here and there remaining, which shew that the Grand Council of Lords had been there.

## CHAP. IV.

### *Of the Chancery.*

**I**T is the birth of the King's power in Judicature, and may deserve the name of the first-born. For though it had no better Title in these later times, than *Officium*; because amongst other of the King's Escripts, it formed Writs remedial for such as had received wrong; yet even by that work, it was in repute for so much skill in the Law of the Land; that by the consent of all, it was as well able to advise a remedy, as to advise the Complainants where to have it: and yet it had one advantage further, that it was an Office of remembrance to the King, who is a person of great Trust in the Law, and gave such credit to all Acts done before him, as being entred into the remembrance, became of the highest nature of Record, against which no plea did lie. Amongst these, matters of debt and contract coming into the account, this Office taking notice of the Record, took cognisance of the thing, and for the executing thereof: and thus in these, and such like Cases, granted Judicial Writs, and so found out a way of Judicature, to as many Causes as the State would trust it with: and because it pretended Cognisance only of matters of Record before them, they found out a way of examining of witnesses by Commission, and returning their Depositions in writing; which being become a Record before them, they gave their sentence upon the whole matter, without the ancient ordinary Trial, *Per pares*: It becomes a kind of peculiar, exempting it self from the ordinary course in manner of Trial, and from the ordinary rules of Law, in giving of Sentence, and as a back door for the King's Arbitry, in case of Judicature in matters of Common pleas, as the Council-Table was in Crown-pleas, they both are looked upon with a very pleasing eye of Majesty, which loves not to be strait laced; yet all is embattelled under the colours of Equity, Honour, Convenience, and Conscience; like a Monopoly that is bred

under the wings of the publick, but feeds it self upon it.

*Inst. 4. c. 8.  
fol. 78.*

That this had attained the Title of a Court so anciently, as in King Steven's time (as the Honourable Reporter noteth) I much question, by the Title that *Fleta* gives it in later times, nor under his favour, will that Testimony cited out of the History of *Ely* warrant it, but upon a mistaken ground of misplacing the note of distinction: for I take the words to be thus translated, *King Etheldred determined and granted, that the Church of Ely should for ever in the King's Court hold the dignity of the Chancery, and not hold the dignity of the King's Court of Chancery*: Nevertheless, it's clear that these times brought it to that condition that it might well carry that name, if formerly it had not; For it grew very fast both in honour and power, and this not by usurpation, (though it did exceed) but by express donation from the Parliament. Yet is this power much darkened in the limits and extent thereof, chiefly in regard that the Chancellour is entrusted with many things, whereof there is no evidence for the Chancery to claim any cognisance. For he was in these times a person of many interests and relations, being one of the *Quorum*, in the Star-Chamber, of the King's Council, chief in the Chancery, most commonly a Clergy-man, and therewith Legate à Latere, and in these several Relations might act directly, and yet in several Courts. And therefore, though he had power with others, to punish neglects of Execution of the Statutes of Wines, by Act of Parliament, and also of the Statute concerning Victual, and to determine matters of controversie between parties in Cases depending before the Parliament, and in some matters that concern the King's Revenue; yet cannot these be said to be the proper work belonging to the cognisance of the Chancery, but to the Chancellour by special Commission in another Relation. Albeit, I cannot deny but the Court it self had cognisance in matters of as strange a nature, *Viz.* To punish disturbances of Merchants in their Trade, to see to the executing of the Statutes of Purveyors, and to remedy grievances contrary to other Statutes (which general words let in a wild liberty to that Court

4 E. 3. cap. 12.

9 E. 3. cap. 1.

14 E. 3. cap. 5.

27 E. 3. c. 26.

36 E. 3. c. 9.

cap. 13.



Court to intermeddle in Laws which were never intended for their touch) to punish Nufances according to discretion, to give remedy, to Merchants upon the Statute of Staple; so that <sup>12 Rich. 2.</sup> it's clear enough the Parliament intended it should be a Court, <sup>27 E. 3.</sup> and gave their Seal to their power of Judicature. Nor as it seemeth, was this any regret to the Courts of Common Law; but as a thing taken for granted. For the Reports tell us, that if the King grants Tythes, arising from without the bounds of any Parish, the Patentee shall sue in the Chancery by *Scire Facias*, and shall there proceed to issue or demurrer, and then to the Common Law; where upon Trial, if the Defendant make <sup>12 Ass. pl. 25</sup> default, the Plaintiff shall have Judgement, and Execution. And if the Heir be in Ward to the King, the Mother shall sue <sup>Bro. scire fac. 154.</sup> and recover her Dower in the Chancery. And they tell us, <sup>154.</sup> that it had power to prohibit Spiritual Courts, and Courts of <sup>24 E. 3. 73.</sup> Common Law, yea, to over-rule or reverse Judgements: and yet the Common Law held it's ground when it was concerned: for neither were all suits there by Bill, as in cases of Equity, nor determined according to such rules, nor did the power <sup>43 Ass. pl. 32</sup> of Judicature rest in the breast of one Chancellour, but in <sup>24 E. 3. pl. 35.</sup> him joyntly with other Council of the King, which were <sup>39 E. 3. fo 14.</sup> also learned Judges of the Law. For the Report informeth <sup>21 E. 3. fo. 47.</sup> that *Edward* the Second, had granted a Rent in Tail to the Earl of *Kent*, who dying, his Son under Age, and Ward to the King, *Edward* the Third, seised, amongst other Lands, the Rent, and granted it to Sir *John Molins*: Upon Petition, the King refers the matter to the Arch-Bishop, and others of the Council, calling to them the Chancellour: A *Scire Facias* goes forth to Sir *John Molins*; he upon appearance, pleaded to the jurisdiction, as a case belonging to the Common-Law; but it would not be allowed, because it was to repeal the King's Charter.

And, whereas, it was objected, that the reference was to the Arch-Bishop, and others, and therefore the cause ought not to be determined in the Chancery; it was resolved that it did properly belong to the Chancery, by the Law: And in the argument

43. *Ass. pl.* 35 Argument of the case, it appears clearly that the King's Council there, were learned in the Law. And the same is yet more evident by the Title of Bills in those days exhibited in the Chancery, which was directed to the Chancellor, and the King's Council, and the rule given, *Per tout les Justices*; which I rather note for the shortness of the form of Bills in those days, far different from these times, wherein the substance of the complaint, however small in it self, is oftentimes blown out into so great a bubble, that it breaks to nothing: And the Statutes formerly mentioned do assert the same thing, as touching the King's Council. For though they speak of the Council or Chancery in the English Tongue, yet in the Original the words are, *Conceil en Chancery*.

Having thus touched upon the matters under the Judiciary of the Chancery, and Judges in the same: in the next place, the manner of proceedings comes to consideration. For it seems they had been formerly very irregular, and that contrary to the grand Charter, upon a bare suggestion in the Chancery, the party complained of was imprisoned, and no proceedings made thereupon: for remedy whereof, it was ordained, that upon suggestions so made, the complainant was to find Sureties to pursue the suggestions, and that the process of Law should issue forth against the party without imprisoning him, and that if the suggestions were not proved true, the complainant should incur the like penalty that the Defendant should have done, in case he had been found guilty: but afterwards this latter clause was altered by another Statute, because it was full of uncertainty; and it was ordained, that in such case the Complainant shall be imprisoned, until he shall satisfy the Defendant of his damages: And furthermore, shall make Fine and Ransom to the King. But because that the Defendant many times held his advantage, even to Extremity; this course lasted not long, but a new Law was made, which put the power of awarding damages in such cases into the Chancellour, to do according to his discretion: And thus the Chancery obtained power to  
award

37. *E. 3. c.* 17.38. *E. 3. c.* 9.17. *Rich. 2. c.*

6.

award damages which they never had formerly, and the Chancellor, a Precedency both in the Chancery, and of the Council in the Court of Star-Chamber, and in many cases in the Exchequer: by the first he had a power in matters of *meum* and *tuum*; by the last in matters, *Mei* and *Regis*; and by the other in matters *Mei* and *Regni*. A considerable man certainly he was in the motions of Government; but how much more if he be made Arch-Bishop of *Canterbury*, Cardinal, and Legate à *Latere*; or Arch-Bishop, Lord Treasurer, and Legate à *Latere*; as these days had divers times seen. Extraordinary advancements bestowed upon the Nobility, brings Honour to the Throne, but if they be not men of noted worth, and uprightness, they make the Scepter sloop, by stirring up of envy in the Nobility, and indignation from the people. For seldom is it seen, that Advancements are fed from the Crown, though they be bred from thence; but either maintained by new supplies from the peoples purses, or the ruine or decay of some Officers more ancient than themselves, or both: And such was the condition of the Chancellour, he sucked fat from beneath, and blood and Spirits from the Grand chief Justiciar of *England*, and so reduced that Honourable Potentate, unto the Degree of Chief Justice of the King's Bench, leaving scarcely unto him the name or Title of Lord. One thing more remaineth, touching the election, or nomination of this Great Man. At the first, he was no better than a Register, or the King's remembrancer, or Secretary, having also the Honour to advise the King in such matters as came within the circuit of the Writings in his custody; and questionless, *Eo usque*, it's suitable to all the reason in the World, that he should be of the King's sole Nomination and Election: But when it befalls, that instead of advising the King, his word is taken to be the rule, and a Judicatory power put upon that; and unto this is superadded that Honourable Trust of keeping and governing the Great Seal of the Kingdom, with the continual growing power occasionally conferred upon him by the Parliament: He is now become no more the King's Remembrancer, but the Lord Chancellour of *England*, and

43. Aff. 1. 32.

and Supreme Officer of State. And it seems but reasonable that he should hold his place by publick Election, as well as the Grand Justiciar (whose Plumes he borrowed) and other Grand Officers of State did before him. For he that will have his Servant to work for another, must give the other that Honour of Electing him thereto; nor was this laid aside nor forgotten by these times, but a claim was put in for the Election or allowance of this principal Officer amongst others, the Parliament obtaining a Judgement in the case by the King's Confession, and so the thing is left to the judgement of future Ages, *Viz. Whether a King that can do no Man wrong, can dis-*  
*15 E. 3. n. 10. semble the Royal Assent in Parliament, or declare himself legally*  
*15 E. 3. cap. 3. in that manner by Proclamation?*  
*10 Rich. 2. n. 16. 10.*

## CHAP. V.

### *Of Admirals Courts.*

**T**His is a third Court that maintained the King's Judicatory power, in a different way from that which is commonly called the Common-Law, and by many is therefore supposed, to advance the King's Prerogative, but upon mistaken grounds: It is very true, that the way is different from the common road, both in it's original, and in the course of proceedings; nor could it other be, considering the condition of the Nations, and the people of the same, interested in common traffick. The people thus interested, as much differed from the other sort of dry men (if they may be so called) as Sea from Land, and are in nature but as march-men of several Nations, that must concenter in some third way for the maintenance of commerce for peace sake, and to the end that no Nation may be under any other Law than it's own. The condition of the Nations in the times when civilized government began to settle amongst

amongst them, was to be under the Roman Emperours, who having settled one Law in the general grounds throughout all Nations, made the Sea likewise to serve under one rule which should float up and down with it, that men might know upon what Terms they held their own, wheresoever they went; and upon what terms to part with it for their best advantage: in its original therefore, this Law may be called Imperial, and likewise in the process, because it was directed in one way of trial, and by one Law, which had its first birth from the Imperial power; and probably it had not been for the common benefit of *Europe* to have been otherwise, at other time, or by other directories formed. Nevertheless, this became no Gem of Prerogative to the English Crown, for if *England* did comply with Foreign Natives for its own benefit, it being an Island full of the Sea, and in the common Road from the most parts of *Europe* that border upon the Sea, and of delight in Merchandise, it is but suitable to it self: and it did so comply, as it saved the main Stake by voluntary entertaining those Laws without being imposed upon by Imperial power: for the Saxons came into this Kingdom a free people and so (for ought yet appeareth to me) continueth to this day: I say that in those first times, they did take into the consideration of Parliament the regulating of the fluctuating motions of Sea-laws: nor were they then, or after, properly imposed by the King's Edict. For though it were granted, that *Richard* the First, reduced the Sea-Laws in the Isle of *Oleron*; yet that the same should be done without advice of Parliament in his return from the Holy-Land is to me a Riddle, considering what Histories do hold forth concerning of his return through *Germany*, nor can that be good evidence to entitle Kings of *England* to a power, to make and alter Laws according to their private pleasure and interest. Nor doth that Record mentioned in the *Institutes*, warrant any such matter, but rather on the contrary groundeth the complaint upon Laws, Statutes, Franchises, and Customs, Established, and that this Establishment was by the King and the Council.

*Instit. 4. cap. 22. fol. 142. 144.*

This



This Law was of a double nature according to the Law of the Land, one part concerning the pleas of the Crown, and the other between party and party; for properly the King's Authority in the Admiralty is but an Authority of Judicature, according to Laws established, which both for process and sentence are different from the Common-Law, as much as the two Elements do differ, yet not different in the power that made them: I shall leave the particulars to be enquired into, by them that shall mind it elsewhere, and only touch so much as shall reflect upon the main Government. This power was executed by Deputies diversly, according as the times and opportunities were, for War or Peace, and either *transitu* or *portu*. What was done in time of War, or whilst this Ship is out of the English Seas, comes not to our purpose, and therefore I shall not meddle with that, further than this, that in the first times Kings were wont to divide the work of Judicature, and of War into several hands. The power of War and Peace they committed unto men of approved courage and Skill in that service, and therefore generally not to the men of highest rank, who had neither mind nor Skill for a work of such labour, dyet and danger: this power passed under divers names, sometimes by grant of the custody of the Sea-coasts, sometimes of the parts and Sea-coasts, sometimes by being made Captain of the Sea-men, and Mariners, and sometimes Admiral of the Ships. It was a great power, and had been much greater, but that it suffered a double diminution; the one in the time, for three or four years commonly made an end of the command of one man, and at the best it was, *quam diu Regi placuerit*; the other diminution was in circuit of the power, for all the Maritime coasts were not ordinarily under the power of one man, but of many; each having his proper precinct upon the South, or North, East, or Western shores: and under the Title of Admiral in the times of Edward the First, and forwards, who brought that Title from the Holy Land; nevertheless, about the end of the times, whereof we now treat; the custody of the whole Sea began to settle in

Gloss. fol. 16.

one hand, under the Title of Admiral of the English Seas, and the place was conferred upon men of the greatest rank, and so continued ever afterward. The power of Jurisdiction, or Judicature all this while remained distinct, and it seems was settled in part in the power of the Sheriff and Justices. For by the Law the Sheriff and Justices had cognisance of matters between the high-water, and the low-water mark, and what was done, *Super altum mare*, was within the directory of the Admiral, these were but few things, and of small considerableness: the principal of them being concerning War or peace, and those only within the English Seas. But after *Edward* the Third had beaten both the French and Spaniards at Sea, the people grew much more towards the Sea, and became so famous, that the greatest Lords thought the Regiment of Sea-affairs worthy of the best of their Rank; and were willing with the Title of Admiral, whilst they left the work to others; and so the Admiral became a person of more honour and less work, than he had been formerly. The greatness of the honour of this place thus growing, soon also began to contract greatness of power beyond what it had formerly; and this was principally in matter of Jurisdiction. For not contented with the power of a chief Justice of War and Peace within the Seas, which was his proper dominion: the Lord Admiral gained the same within the low-water mark, and in the main streams below the next Bridge to the Sea, and in all places where Riddels were set; and yet these places were within the body of the County. Nor did he endeavour less to gain in matters of distributive Justice, for although he had a legal Jurisdiction in things done upon the open Sea, so far as to defend, order, determine, and cause restitution to be made, in cases of damage done unjustly; yet was it no less difficult to keep this power within its own bounds, than the watry element upon which it floated; but it made continual waves upon the Franchise of the Land; and for this cause, no sooner had these great men favoured of the honour and Authority of that dignity, but comes a Statute

15 Rich. 2. c. 3.  
Dier. 15. § 16.  
El. mic pl. 2.  
8 E. 3. Coram.  
199.

to restrain their Authority in the Cognisance of Cases only,  
 13 *Rich. 2. c. 5* unto such matters as are done upon the main Sea, as formerly  
 15 *Rich. 2. c. 5* was wont to be: and within two years after, that Act  
 of Parliament is backed by another Act to the same purpose,  
 in more full expressions, saving that, for Man-slaughter, the  
 Admirals power extended even to the high water mark,  
 and into the main streams. And this leadeth on the next con-  
 sideration, *Viz.* What is the subject matter of this Juris-  
 diction, and Authority: I shall not enter into the depth of  
 particulars, but shall reduce all to the two heads of Peace and  
 Justice.

The Lord Admiral is, as I formerly said, a Justice of Peace  
 at Sea, maintaining the Peace by power, and restoring  
 the peace by setting an Order unto matters of Difference, as  
 well between Foraigners, as between the English and Foraign-  
 ers; as may appear by that plea in the fourth Institutes, for-  
 merly mentioned.

Secondly, That point of Justice principally concerneth mat-  
 ters of Contract, and complaints for breach of Contract; of  
 these the Admiral is the Judge, to determine according to Law  
 and Custom. Now as subservient unto both these, he hath Au-  
 thority of command over Sea-men, and Ships that belong to  
 the State, and over all Sea-men and Ships in order to the service  
 of the State, to arrest and order them for the great voyages of  
 25 *Rich. 2. c. 3.* the King and the Realm, and during the said voyage; but this  
 he cannot do without express Order, because the determining of  
 a voyage Royal, is not wholly in his power.

Lastly, the Lord Admiral hath power, not only over the  
 Seamen serving in the Ships of State, but over all other Seamen,  
 to arrest them for the service of the State; and if any of them  
 2 *Rich. 2. c. 4.* run away without leave from the Admiral, or power deputed  
 from him, he hath power by enquiry to make a Record there-  
 of, and certifie the same to the Sheriffs, Mayors, Bailiffs, &c.  
 who shall cause them to be apprehended and imprisoned. By  
 all which and divers other Laws, not only the power of the  
 Admiral is declared, but the original from whence it is deri-  
 ved, namely from the Legislative power of the Parliament,  
 and



and not from the single person of the King, or any other Council whatsoever. But enough hath been already said of these Courts of State, in their particular Precincts. One general interest befalls them all: that as, they are led by a Law much different from the Courts of Common-Law, so are they thereby the more endeared to Kings, as being subservient to their Prerogative, no less than the Common-Law is to the peoples liberty: in which condition being looked upon as Corrivals, this principal Maxim of Government will thence arise, That the bounds of these several Laws are so to be regarded, that not the least gap of intrenchment be laid open each to other, lest the Fence once broken, Prerogative or Liberty should become boundless, and bring in confusion instead of Law.

## CHAP. VI.

### *Of the Church-mens Interest.*

**B**UT the Church-mens interest was yet more Tart, standing in need of no less allay, than that of the King's Authority; for that the King is no less concerned therein, than the people; and the rather; because it was now grown to that pitch, that it is become the Darling of Kings; and continually henceforth courted by them; either to gain them from the Papal Jurisdiction, to be more engaged to the Crown, or by their means to gain the Papal Jurisdiction, to be more favourable and complying with the Prerogative Royal. The former times were tumultuous, and the Pope is gained to joyn with the Crown to keep the people under, though by that means, what the Crown saved to itself from the people, it lost to Rome: Henceforth the course of Affairs grew more civil, or (if you will) graced with a blush of Religion: and it was the policy of these times, where

25 E.3.Stat.6

whereof we now Treat , to carry a benign Aspect to the Pope, so far only as to stave him off from being an enemy , whilst Kings drove on a new design to ingratiate and engage the Church-men of their own Nation , unto it's own Crown. This they did by distinguishing the Office , or Dignity of Episcopacy , into the Ministerial and Honourable Parts; the later they called Prelacy , and was superadded for encouragement of the former , and to make their work more acceptable to men for their Hospitalities sake ; for the maintenance whereof , they had large Endowments and Advancements : And then they reduced them to a right understanding, of their Original, which they say, is neither *Jus Divinum*, nor *Romanum*, but that their Lordships, Power, and great possessions, were given them by the Kings, and others of this Realm. And that by vertue thereof, the Patronage and custody of the Possessions in the vacancy ought to belong to the Kings, and other the Founders; and that unto them the right of Election into such advancements do belong, and not unto the Pope, nor could he gain other Title unto such power, but by usurpation, and encroachment upon the right of others. But these Great Men were not to be won by Syllogisms ; Ordinarily they are begotten between Ambition and Covetousness, nourished by Riches, and Honour ; and like the Needle in the Compass, turn ever after that way. Edward the Third , therefore labours to win these men , heaped Honour and Privileges upon them , that they might see the gleanings of the Crown of England, to be better than the vintage of the Tripple Crown. Doubtless, he was a Prince that knew how to set a full value upon Church-men , especially such as were devout ; and it may be, did somewhat outreach in that course : For though he saw God in outward events , more than any of his Predecessors ; and disclaiming all humane merits , reflected much upon God's mercy , even in smaller blessings: yet we find his Letters reflect very much upon the Prayers of his Clergy, and loved to have their Persons nigh unto him , put them into places of greatest Trust , for Honour , and Power, in Judicature ; that not altogether without cause, he had thereby pur-

purchased unto his Kingdom, the name and repute of being a Kingdom of Priests. But all this is but Personal, and may give some liking to the present Incumbents, but not to the Expectants; and therefore the Royal Favour extended so far in these times, as to bring on the Parliament to give countenance to the Courts and Judiciary power of the Ordinaries, by the positive Law of the Kingdom, although formerly the Canons had already long since made way thereto by practice: I shall hereof note these few particulars ensuing.

*Ordinaries shall not be questioned in the King's* 15 E. 3.  
*Court for Commutation, Testamentary Matters, or* cap. 6.  
*Matrimonial Causes, nor other things touching jurisdic-*  
*tion of Holy Church.*

Things formerly bred by the Canon, nourished by continual practice, allowed by Ordinance of Parliament, or Grant from Kings in Parliament, are now confirmed by solemn concurrence of the whole representative Body of the Kingdom, to have and to hold with Warranty. And yet the sence is not so general as the words, nor doth it seem much other, than a Confection made for the Arch-Bishops appetite, to cure a distemper between him and the King: for the Civil Judge lost nothing hereby, nor would the Crown, as may appear by a Law of equal Authority with the former: for though an Executor or Administrator may cheat, yet it tells us that Ordinaries only can oppress, and extort from dead Men; and therefore in such cases doth provide remedy by enquiry, and Indictment before the King's Justices.

22 Aff. pl. 70  
45 E. 3. 24.  
Fif. consulat.  
5.  
31 E. 3. cap. 4.  
25 E. 3. Stat. 3  
cap. 9.

*They shall have Cognisance of Usury, during the* 15 E. 3. c. 5.  
*Delinquent's Life, and the King after the Delinquent's*  
*death.*

The difference ariseth from the different end; the first being to reform the Person by Church-censures, and to urge him

*Minor. Just.*  
*cap. 5. Sect. 1.*  
*51 H. 3. petitt.*  
*cleri. Artic. 16*  
*50 E. 3. n. 158*  
*6 Rich. 2. n. 57.*  
*14 Rich. 2. n.*  
*24.*  
*Infit. 3.*  
*cap. 70.*  
*6 E. 3. coram*  
*Rege, Rot. 130.*  
*Porff.*

him to restitution; the latter is for the King's Fine or Forfeiture: For as touching the Usurer's estate, the offence was in the nature of Felony, forfeiting both Lands and Goods to the King, after the Delinquent's death: And it seemeth the manner was to Indict the Delinquent during his life, and that stuck to him as a deadly Arrow in his side, till he died. Nor did it lie in the power of the Ordinary, by Ecclesiastical censure, so to reform the Offender, as to clear him to the King, unless the party offending, made his peace with the King by Composition: and thus the Law continued, for ought appeareth to me, till the time of Henry the Eighth.

*25 E. 3. c. 8.*  
*pro clero.*  
*18 E. 3. c. 2.*  
*15 E. 3. Stat. 2.*  
*9 Rich. 2. c. 4.*

*They shall have Cognisance of avoidance of Benefices of Right: They shall certifie Bigamy; and Bastardy had beyond the Sea; and whether a Prior be perpetual, or Dative.*

*Bro. quær.*  
*imp. 85.*

The first of these concerning avoidance of Churches, it seemeth was somewhat doubtful in point of practice, for that the Civil Judge used to determine all manner of avoidances, as well in Fact, as of Right; but by this Statute they are restrained only unto avoidances in Fact, so as after this Statute it is holden, that avoidances by death shall be tryed by the Countrey; but if the avoidance be by Deprivation, Resignation, Creation, or otherwise, it shall be tryed by the Ordinary: because by common intendment he is more connusant of the thing, than Countrey people. But as touching the point of *Bigamy*, the matter is more doubtful, in regard that commonly the marriage of a second Wife, or Widow; is a matter in Fact, done in the face of the people; and of which they take notice; especially where the life of man is concerned, which rather requireth the Judgement of his Peers, than where the outward maintenance only is engaged. Nevertheless, because the main point is, whether the party be a Clerk or not, and the same anciently rested upon the Certificate of the Ordinary: It's by this Law again allowed to him to try and certifie this point of *Bigamy*. also, although

although the Statute of *Bigamits*, might seem to Entitle the civil Magistrate thereto, as the Law was holden to be before this <sup>8 E. 3. cap 8.</sup> Statute was made. In the next place, although it cannot be denied, but the Trial of Bastardy beyond the Sea, might as well lie in the Cognisance of the Lay Magistrate, as in that of the Ecclesiastical; yet seeing the Clergy had already attained the Cognisance of the thing, the place proved but a matter of Circumstance; especially they having the advantage of the Civil Magistrate in this, That in regard the Ecclesiastical persons beyond the Sea, had also obtained the Cognisance of that matter amongst themselves, their Testimony or Certificate would come with more credit to the Clergy in this Kingdom, than to the Magistrate; whose Cognisance in such Cases they did disallow.

Lastly, concerning Priors, whereas some were presentative, and filled by Induction from the Ordinary; and others were Donative, having their Priors meerly at the will of the Abbot, to be placed and displaced as he thought most expedient: if then the point in Issue depends upon this knot, this Law referreth the Trial unto the Ordinary, who by common presumption best knows whether any Institution and Induction had passed his Registry, and Seal, or not. And thus, though a kind of Judicial power seemeth to be carried along herewith, yet is all in a ministerial and subservient way, unto the Civil Magistrate; and nevertheless, with such credit and Authority, that the main hinge of the Judicatory, in such cases, depends upon the dash of their Pen.

*No Bishop, nor Arch-Bishop, shall be impeached before the Civil Magistrate, without the King's express* <sup>18 E. 3. c. 1.</sup> *Warrant.*

The former particulars, concerned matter of Authority; this and others ensuing, concern matter of immunity, which, or most of which were formerly for a long time within the Fancy of the Canon, but never came to the height of Parliamentary approbation or Authority till now, that it comes in

as a peace-offering to pacifie the quarrel between the Archbishop *Stratford*, and the King: For he being engaged in the French Wars, so resolved to continue; and therefore to maintain distempers at home, he held neither Honourable, nor safe.

*Their Temporalities shall not be wasted, during the*  
 14 E. 3. c. 2. *Vacancy: Nor shall they be seised, but by Judgement of the Court.*

The first of these was an ancient Law, grounded upon great reason; although dulled by time, and by covetousness of the needy Patrons, next to laid aside, if not quite put out of countenance: So as a new Law must be made to revive it, and to abolish that corrupt custom, or practice of depredating those possessions given to a holy use in common supposal, contrary to the trust by them undertaken, and the use still continuing. But the second Branch is in nature of a Law of Restraint, set upon the Common Law: for the persons of these Spiritualized men, were of so aery a constitution, as they could not be holden by hands made out of the Clay, such as the rude Laity were; and therefore the Civil Magistrate, upon all occasions used to lay hold upon that, whereof there was some feeling, which were called Temporalities, and thereby drew them to appearance at the Lay-Courts; for however Spiritual the Clergy were, they would not easily part with their Lay Fees. But now by this Law, the times are so attenuated, that the very Temporalities are made so Spiritual, as not to be meddled with by the Lay Magistrate, unless upon judgement first obtained against them. And suitably thereunto within twelve years following, another

25 E. 3. c. 6.

Law was made more punctual, that their Temporalities should not be seised upon for contempts; but that their Persons should be seised; yet within twenty years after that, this Law begins to be out of Countenance, and the Opinions of the Judges began to grow bold upon the ancient rule, that their Temporalities were Temporal, though their persons were Spiritual; and that it was more dangerous to im-

prison the person of a Clergy-man, than to attach his possessions : And therefore they held, that if the Ordinary remove not the Incumbent when the King's Writ commands him so to do, his Temporalities should be seised. And if the Ordinary should certifie one to be a Clerk which is none, the like course is to be taken.

44 E. 3.  
fol. 35, 36.  
Per Thorpe.  
7 H. 4. fol 41.  
Per Gascoign.

*They shall depute the next and most lawful Friends of the Intestate to administer his goods.* 31 E. 3. c. 11.

The Statute at *Westminster* the second, having given formerly a kind of allowance, that the Ordinary should be Administrator to the Intestate, so far as to answer the Intestate's debts, lent him thereby an opportunity to possess himself of the whole, to all intents and purposes ; which being observed by the Parliament, by this Law they made way for Administration, to fall through the hands of the Ordinary, into the Lap of Administrators, made by the Authority of the Parliament ; but of the Ordinaries nomination, according to the Authority hereby to him given. These Administrators thus made, had a greater power than ever the Ordinary had, or could give. For though the Ordinary by the Statute at *Westminster*, was bound to pay the Debts of the Testator, yet could he never bring Action as the Administrator to all intents by this Law is enabled to do : And though it be true, that the Administrator is by this Law ordered to account to the Ordinary, yet doth not that entitle the Ordinary to any interest in the personal Estate ; but only gives him a bare Authority to take the account, without any compulsory power by Ecclesiastical censures, to enforce him thereto.

Secondly, it is such an account, as is no Evidence in any Court of Record : And Lastly, if upon the foot of the account, any arrere remained, or surplussage of Estate ; the Ordinary could neither recover, nor order the same ; because by the Law anciently, the next friends had the sole interest therein : and being by this Statute made Administrators,

the whole power of ordering the Estate is vested in them.

To conclude, this Statute was made in favour, and for the ease of the Ordinaries, if they would please so to take it, for they could get no benefit by executing the Administration in their own persons, if they intended to Administer according to the Law.

5. E. 3. cap. 5. *The Persons of the Clergy are privileged from Arrests, during the Holy Actions of their Officiating.*

1. Rich. 2. c. 15. This was plotted since *Anselm's* time, he and his Successors endeavoured by Constitution, and Canon, continually to mind the Civil Magistrate thereof, but could never nurse it up to the Degree of a Law, till now; they gained the advantages of the times, growing into a more tender apprehension of Devotion, than formerly. The penalty of transgressing this Law is left in general, and therefore did the less scare, but within three years after, it was confirmed with a certain penalty of Fine, and Imprisonment, as to the King's suit, and damages to the party offended: and the Privilege was enlarged, for, and during their continuance in the Consecrated ground, in order to such Services, and not upon Fraud, or Collusion to avoid Arrests: But by neither of these Laws was the Arrest (although contrary to them) made void, as touching the Process.

14. E. 3. Stat. cap. 1. *The goods of the Clergy, are discharged from Purveyance, and their Houses from Quarter.*

The latter of these was an Encroachment upon the greater Clergy-men: For under the Title of Hospitality, which the Prelates were obliged to by their great Possessions, and Revenues, conferred upon them to that end, Kings used to quarter Messengers, to and from *Scotland*; The King's Horses, Dogs, and Hawks, &c. But the point of Purveyance, was an ancient Prerogative belonging to Kings, and by no Custom were the goods of any man discharged therefrom, till



till it was by Act of grace first confirmed by *Edward* the First, and afterwards by grant of *Edward* the Second, yet by reason of the rudeness of the times, did not those Acts prevail to that settlement that was promised; till now *Edward* the Third renewed the Law: nevertheless could not this Law of *Edward* the Third perfect that work, because it was but a bare command till *Richard* the Second made a remedial Law, giving thereby the Clergy that were wronged a right of Action of Trespass against the Purveyors, and to recover treble damages, whereas formerly they were liable only to a fine to the King, which many times was as soon pardoned as asked. West. 1. cap. 1.  
Stat. de pris. Ric. 2. c. 3.

These condescensions might have wedded the English Clergy to the English Crown, but that it was coy and expected further gratuities: besides they beheld their old Step-dame *Rome*, now in its full Splendor and Power, and deeply interested in the sway of affairs in this Kingdom, and above all the rest, the high affinity between the Prelate and the Pope was such, that they sucked one milk, breathed one Air, and like the Philosophers twins, lived in each other: The latter of these was not discerned by those dim sighted times, and therefore they could do nothing towards the dissolution of that knot, but left it to future times, who found no other way than to cut it asunder: But *Edward* the Third and his Successor espyed the first, felt the inconvenience thereof, and applied themselves to such remedy as they found most ready at hand. All things that are subject to time are also subject to change, which comes commonly slower upon Governments that are less Ecclesiastical, for Churches continue longer in a growing condition than in their complete estate, like a Christian that seldom endures long after his full ripeness. Thus *England*; it's hitherto above a thousand years since the Gospel came to the Saxons, and well nigh a thousand years since the Pope set his foot amongst us; ever approaching nigher the Throne, and ascending thereunto; but finding it full of a King that would not remove, he sits down in his Lap; a heavy burthen question-  
less

less he was, considering his claim of Jurisdiction, his provisions, pensions, exemptions, impositions, and such like oppressions; and therefore it's no wonder if the King feeling the incumbrance, gives a list at the Pope's power, by stopping the currant of Money from *England, Rome-wards*: To this end, the Statute made at *Carlisle* is revived, whereby the Clergy are inhibited from conveying Treasure beyond the Seas; but the Pope knew how to ride, and will not so easily forego his saddle. The *Roman Eagle* had made many a fair flight in *England*, and had not yet fully gorged himself; he grants ten thousand Marks yearly out of Taxes laid upon the Church-livings in *England*, unto two Cardinals, neither of which did, nor, by the Canon, could live in *England*; the *Treasurer*ship of *York* also to another Cardinal, after that the King had conferred the same elsewhere. He proceeds also further to invade the undoubted rights of the Crown, by making an election of the B. of *Norwich*, and causing him to be invested *Rege renitente*: the King spent eight years in the recovery of his right, and was deluded in the conclusion; he now sees it bootless to stand always upon his defence, and receive affronts; he resolves therefore to enter the lists, and maketh seizure of the *Deanery of York*, which formerly by usurpation, the Pope had conferred upon a Cardinal; and of all Church-livings given by the Pope to aliens. Then a Law is made more sharp than those in the eighteenth year, wherein Provisors of Abbies and Priories are made liable to a *Premuniri*, and Provisors of other Ecclesiastical Livings and Dignities, whereby the presentation of the rightful Patron is disturbed, to be fined and imprisoned until the fine and damages to the party wronged be paid. And all such as draw men to plead out of *England*, in cases that belong to the cognisance of the King's Court, and all obtainers of provisions in the Court at *Rome*, these were also subject to a *Premuniri*. For whilst these things were thus in action, the Pope bestirred himself notably with Citations, Excommunications, Interdictions, and such other birds of prey, not only against mean men, but Judges, Bishops,

4 E.3. c.6.

5 E.3. c.3.

Rot. Parl. 10.

E.3. Arch.

Reg.

18 E.3. tit 38.

Fox. 388.

25 E.3. Stat.

5. cap. 22.

Fox. Sch. 1.

27 E.3. c.1.

Bishops, and the King's Council; as amongst others, the case of the Bishop of Ely, at the solicitation of some of inferiour regard, as I remember, a Clerk or some such thing: yet as these Bull-drivers or summoners to the Romish Court, were no late upstarts, so were not these times the first that took them to task: for before the Statutes of *Premuniri*, we find provision was made against Provisors, and that some Statute did precede those in Print, which punished a disturber of the King's Incumbent, by a Bull from *Rome*, with perpetual imprisonment, or at the King's will; besides the party wronged was allowed an Action for his damages, *Qui tam pro Domino Rege quam pro seipso sequitur*; and before that time also, bringers of Bulls from *Rome* were imprisoned, although in all these cases aforesaid, the liberty of the Persons, both of Lords and Prelates, was saved: And thus all the while King Edward the Third kept the field, he gave the Pope cuff for cuff, but retiring himself to take his ease, he waxing wanton, waxed weak, and more slowly pursued the vindication of his own right, and his Subjects liberty. The Laws are laid aside, and *Rome* had further day given to plead, and in the mean time execution is staid: the double mind is double dyed, and advantage is soon espyed; above sixty Church-livings more are suddenly catched and given to the favorites at *Rome*; the Parliament rings herewith, yet the King delays the remedy, and in this Edy of affairs, Edward the Third dies, and Richard the Second takes up the place, who had wit enough to observe what concerned his own interest, and courage enough to pursue it: But neither wit nor courage to over-rule his lusts, which in the conclusion overruled all rule, and brought himself to destruction. He found the people at his entrance into the Throne irritated with the Pope's oppressions, and vexed at his Grandfathers desidioufulness. His Spirit is also stirred within him, and himself thereby pressed to tread in his Grandfather's former ways, and to outrun him in his latter: he made the penalty of *Premuniri* to extend to all Farmers, or others; in nature of Bailiffs, that held any Church-maintenance to the use of any Alien, and

*Antiq. Brit. Eccles. 247.*

*21 E. 3. fo. 40.*

*38 E. 3. c. 1.*

*Rot. Parl. 51. E. 3. tit. 35.*

*3 Rich. 2. c. 3.*

7 *Rich. 2.**cap. 13.*12 *Rich. 2.**cap. 15.*

and unto all Aliens that are Purchasors of such Provisions to any use: and unto all Lieges, that shall in like manner purchase such Provisions.

13 *Rich. 2.**Stat. cap. 21.*

But as touching such as shall accept such provisions, he ordained Banishment for their Persons, and Forfeiture of their Estate: Notwithstanding all this, the Roman Horse-leech would not so give over. The King grew into displeasure with his Subjects, and they with him, and with one another; they see the Pope still on Horse-back, and fear that the English Clergy, their own Countrey-men, if not Friends, and Abettors, yet are but faint, and feligned Enemies to the Pope's Cause. Nor was it without Cause that their fear was such, for as the Pope had two hands to receive, so they had two hearts, making show of forming blows at the Pope, but then always at a distance, or when without the Pope's Guard; and thus the Laws begin to stammer and cannot speak so plain English as they were wont. The people hereat offended, resolve to put the Clergy into the Van, and to try their mettle to the full.

16 *Rich. 2. c. 5.*

At the last Parliament that *Richard* the Second did hold, both the Lords Temporal, and Spiritual, are opposed one by one. The Lords Temporal (like themselves) resolve and enter their Resolutions, to defend the right of the Crown in the Cases of Provisors; although even amongst these great men all were not equally resolute; for Sir *William Brian* had purchased the Pope's Excommunication against some that had committed Burglary, and he was committed to the Tower for his labour: But the Prelates answer was ambiguous, and with modifications, which was all one to cry (as men use to say) Craven: yet was the Statute made peremptory, according to what was formerly Enacted. And though the Prelates cautionary way of proceeding, might be a principal reason why the Pope's power held so long in *England*, in an usurping way: yet Kings also much conduced thereto, by seeking too much their personal ease above the Honour of their Place, and the Pope's blessings, and opinion of his Favour, more than their own good, or the

*Antiq. Brit.*

the peoples liberty : for there was no other balm for a distracted mind, than that which dropped from the Pope's lips. In like manner, *Richard* the Second, being already, at least in purpose, estranged from his people, sought to get Friends at *Rome*, to hold by the Spiritual Sword, what he was in danger to lose, by laying aside the Sword of Justice, which is the surest Tenure for Kings to hold by : And though the Popedom was now under a Schism, between two Popes, *Clement* and *Urban*; yet he was so far won for *Urban*, that he not only engaged himself, and the Parliament, to determine his Election, and uphold the same ; but also, *Ex abundante*, did by Implication allow to him an Indefinite power, to grant provisions, and so at once he lost the Die, and gained a Stake, that like a bubble looked fair, but soon vanished away. 2. Rich. 2. c. 7.

Nevertheless, these two Comrades, whilst they were together, resolved to make the most of each other that they could ; and therefore though the Popedom liked not the King, yet the Pope had his love so far, as he could deny himself ; for he had already denied his Kingdom : And (if the Articles exhibited against the King by *Henry* the Fourth, be true) the Pope had his Faith also : For (that he might be rid of his reputed Enemy, Arch-Bishop *Arundel*) he trusted the Pope with that *Antiq. Brit.*

Complement of making *Walden* Arch-Bishop of *Canterbury* in *Arundel's* stead ; which the Pope took so kindly, as he made it a precedent for provisors for the future. Nor did the King stick in this one Singular ; but made it his Custom in passing of Laws, (especially, such as the King was most devoted unto) to put more Confidence in the Pope's *Amen*, than in all the prayers of his Commons, with his own *Soit fait*, to boot. The sum then will be, that the prize was now well begun, concerning the Pope's power in *England*. *Edward* the Third, made a fair blow, and drew blood ; *Richard* the Second, seconded him, but both retired ; the former left the Pope to lick himself whole, the latter gave him a salve, and yet it proved a Gangrene in the conclusion.

15 E. 3. Stat. 3  
cap. 6.

The second means used to bring down the power of the Pope in this Nation, was to abate the power or height of the English Clergy: for though the times were not so clear as to espy the Root of a Pope in Prelacy, yet experience had taught them, that they were so nigh engaged, that they would not part. And therefore, first, they let these men know, that Prelacy was no Essential Member to the Government of the Kingdom; but as there was a Government established before that rank was known, so there may be the like when it is gone. For *Edward* the Third, being troubled with a quarrel between the two Arch-Bishops of *Canterbury* and *York*, concerning Superiority, in bearing the Cross; and the important affairs of *Scotland*, so urging, summoned a Parliament at *York*, which was fain to be delayed and adjourned for want of appearance, and more effectual Summons issued forth; but at the day of Adjournment, none of the Clergy of the Province of *Canterbury* would be there; and upon this occasion the Parliament was not only interrupted in their proceedings, but an ill precedent was made, for men to be bold with the King's Summons, in such Cases as liked not them; and thereupon a Statute was made to enforce Obedience upon Citizens, and Burgeses, and such Ecclesiasticks as held, *per Baroniam*. Nevertheless, when the matters concerning provisors began to come upon the Stage, which was within two years after that Law was made, the Clergy found that matter too warm for them, and either did not obey the Summons, or come to the Parliament; or if they came, kept aloof; or if not so, would not Vote; or if that, yet order their Tongues, so as nothing was certainly to be gathered, but their doubtful or rather double mind. These Prelates thus discovered, the Parliament depended no more upon them, further than they saw meet: At six or seven Parliaments, determined matters without their Advice; and such as crossed the principles of these men: and therefore in a rational way might require their Sense above all the rest, had they not been prepossessed with prejudice, and parties in the matter. Nor did

did *Edward* the Third, ever after hold their presence at so high Repute at such meetings; and therefore summoned them, or so many of them, as he thought meet for the Occasion; sometimes more, sometimes fewer, and at a Parliament in his forty and seventh year, he summoned only four Bishops, and five Abbots. And thus the matter in Fact passed in these times, albeit the Clergy still made their claim of Vote; and desired the same to be entred upon Record.

And thus the Parliament of *England* tells all the World, that they hold themselves complete without the Clergy, and to all intents and purposes, sufficient to conclude matters concerning the Church, without their Concurrence. Thus began the Mewing time of Prelacy, and the principal Feather of their wings to fall away, having now flourished in *England* nigh eight hundred years: and had future Ages pursued the flight as it was begun, these Lordings might have beaten the Air, without making any speedy way, or great work, saving the noise.

A third step yet was made further, in order to the reducing of the power of the Popedom in *England*, but which stumbled most immediately upon the greatness of the Prelates. For it was the condition of the Spiritual powers, besides their height of Calling to be set in high places, so as their Title was from Heaven; but their possessions, were from men, whereby they gained Lordship, Authority, and power, by way of Appendix to their Spiritual Dignities: This Addition however it might please them, yet it for a long time e're now had been occasion of such murmur and grudge in the Commons against the Clergy, as though it advanced the Clergy for the present, yet it treasured up a back reckoning for these men, and made them liable to the displeasure of the Laity, by seizure of their great places: when as otherwise their Ecclesiastical Dignities had been beyond their reach. And of this, these times begin now to speak louder than ever; not only by complaints made in Parliament by the people, but also by the Lords and Commons in Parlia-

*Antiq. Brit.*  
23. Co.

25. E. 3. Rot.  
*Palm.* 22. n. 15.

ment, to the King, that the Kingdom had been now long, and too long time been governed by the Clergy, to the disherison of the Crown; and therefore prayed, that the principal Offices of the Kingdom, might henceforth be executed by the Laity: and thus the stir arose between the Lords Temporal and Spiritual, each prevailing or losing ground, as they had occasion to lay the way open for them. The Duke of *Lancaster* being still upon the upper ground, that as little regarded the Pope's Curse, as the Clergy loved him.

But the worst, or rather the best, is yet behind; Outward power, and Honourable places, are but under-fetters, or props to this Gourd of Prelacy, that might prove no less prejudicial by creeping upon the ground, than by perking upward: For so long as Errour abideth in the Commons, Truth can have little security amongst Princes; although it cannot be denied, but it's a good sign of a clear morning, when the Sun-rising, gloryeth upon the top of the Mountains. God gives Commission therefore to a Worm, to smite this Gourd in the Root, and so at once both Prelate, and Pope, do wither by undermining. This was *Wickliff*, that had the double Honour of Learning in Humane and Divine Mysteries; the latter of which had for many years passed obscurely, as it were in a twilight amongst the meaner sort, who had no Endowments to hold it forth amongst the throng of Learned or great Men of the World.

And though the news thereof did sound much of Holiness and Devotion, Theams unmeet to be propounded to an Age scarce Civilized: Yet because divers of them were more immediately reflecting upon the policy of the Church, wherein all the greater sort of the Church-men were much concerned, but the Pope above all the rest; the access of all the matter, was made thereby more easie to the Consideration of the great Lords and Princes in the Kingdom, who out of principles of State, were more deeply engaged against the Pope, than others of their Rank formerly had been: Duke *John of Gaunt* led the way in this Act, and had a party



party amongst the Nobility, that had never read the Canon-Law.

These held forth *Wickliff* and his Learning to the World, and *Edward* the Third himself favoured it well enough, but in his old Age desiring his ease, was contented to look on, whilst his Lords Temporal and Spiritual played their prizes, yet giving his *plaudite* rather to his Son, than his Spiritual Fathers, as if led by principles of Nature, rather than Religion: This was the blossoming part of the *Wickliffists*, but the principal strength was from beneath, where the roots spread and fastened exceedingly, especially in the South, and Eastern parts of this Kingdom. To tell of the *Usurpations of the Clergy*, the *Idolatri of their costly Worship*, the *Vanity of their Curser, &c.* was exceeding welcome news to an oppressed multitude, especially where these things were rightly understood. The Issue soon manifested it self, to the World, no Parliament passed without reflexions at Prelates, *Rome*, or some such thing; and not only the persons and practices of these men, but even their Laws and Canons, were begun to be had in contempt; and their missives slighted. And thus these men pretending patronage, both from Right drawn <sup>51 E. 3. m. 46,</sup> from Heaven, and derived from men, fail in their Evidence, <sup>47.</sup> unless the people do still believe more than they are able to understand.

No marvel if *Rome* be now rowzed, and that sort of men that formerly were Wolves in Sheeps cloathing, become now red and fiery Dragons, taking up a new course of Establishing their power by persecution. This was a way of power indeed, but it's a touchy thing to have to do with fire, lest it gets too high. It is therefore holden a point of discretion by the Prelates, not to meddle with the Lords or the Common people; the former were too great, the latter too many; the one sort would not hear, the other would not understand: The Teachers therefore being the Velites, at them they give fire. *Wickliff* their Leader, comes on bravely; and notwithstanding, they all made at him, he routs them, and in despite of them all, comes off fairly, and

*Antiq. Brit.* and dies in his bed by the course of Nature: Then an Ordinance is levelled at the rest of the Teachers: This was made of an old Canon, the nature whereof was to this purpose.

5 Rich. 2.  
Stat. 2. c. 5.

*That upon complaint of the Bishop, the King's Writ shall be granted, to apprehend Preachers of Heresies, Errors, and matters of Slander, tending to Discord, and Dissension, between the States of this Realm, with their Factors, and Abettors; and to imprison them, till they be acquitted according to the Law of the Church.*

This Law (for such it yet appears) gives occasion to consider of these particulars, *Viz. The Crime, the Delinquents, the manner of Inquisition, and the Penalty.* For the first, (not to trouble my way with Debate, about the right of liberty of preaching) the matter in Fact was, that Men did publicly Preach without Authority, matters of *Theology*, tending (as it's said) to sow discord and dissension; so as they are under consideration and censure of the Church-men and Canon-Law, in one regard, and of the Laws of the Kingdom and Civil Magistrate, as disturbers of the peace, on the other side: and thus the Subjects liberty is cast into a misterious, cloudy, and doubtful posture, by matters of Opinion.

Secondly, the persons Delinquent, are also left to an indefinite Construction: For they are not only preachers in publick, which might be an Order of Men, within the Church Cognisance as things then stood; in regard it was permitted to the Church, to Authorize Men to preach, but also their Factors, and Abettors; words that might comprehend any other person whatsoever, according to the passion or discretion of the Church-men.

Thirdly, the manner of this Inquisition must be according to the Canon, and then the people are at the Church-mens mercy, to return Complaints against whom they please, upon such Grounds as they shall think meet. The persons that must make this Inquisition by this Law, are the Ordinaries, or any one

one of them, and for ought appears the same might be done, by Pope, Council, general, National, Provincial, Diocessan, or their Delegates, according to the Canon: Although the last precedent that I met with, was executed by a Grand Council of Lords and Prelates, in the time of Henry the Second. But now the Clergy finding the Laity, began to swell against the Canon; they thought it high time to get the Civil Sword to joyn in the work, to be as their Hands to apprehend, and Gaolers to hold in Custody, such as they should complain of, without any other Legal Conviction; although hereby, they not only disclaimed the exercising of their own power of Imprisoning, which they by the Canon formerly claimed to have in such Cases; but also acknowledged to receive their power Judicatory in such Cases from the Parliament.

Thus was this Ordinance levelled, as I said, but the shot fell short: For this Law attained no further perfection, than a meer shape, and was complained of by the Parliament, within few months after its first noise, that it was made and published without the Commons consent, or knowledge; and that the Nature thereof was directly contrary to the Liberties of the people; and therefore they prayed that it might be repealed, and the same was done accordingly; although the times have been such as would not suffer the same to come into the publick Book of Statutes in Print. But whether Statute, or no Statute, they tell the King plainly, that they will not further be bound or justified by the Prelates, than they, or their Ancestors were anciently used to be; and besides that, they thought somewhat more, which they laid up against future times; nor was it long ere they discovered it. For a Subsidy being offered to the King by the Laity, under a *Proviso*, that the Clergy would grant a Tenth; the Clergy took this Articulating of the Commons in snuff, and protested that the Laity should not charge them. The Commons hereat begin to bid battel, to the Temporalities of the Clergy, and had not the King been a fast Friend in good earnest unto the Clergy, the Laity had won the Field, Thus were these times like the mo-  
tion

6 Rich. 2.  
Artic. 52.

tion of the Ballance unto the Church-men, sometimes up, sometimes down ; getting somewhat which they formerly had not, with less assurance in what they had.

## CHAP. VII.

### *Concerning Trade.*

**K**INGS hitherto had lived upon the main stock, improving the same to the utmost peny : few of them laid up for the future, much less endeavoured to advance the principal for their Successors.

There had now been ten Kings of this Nation since the Conquest, all of them spending what they had, or could get from the people, in the maintenance of their Patrimony, or their own Lusts : if any over-plus was either gained by, or saved from the game, their Executors might be the better for it, their Heirs were not : But *Edward* the Third had a new game to play, he must gain his right by his Sword, or he must lose it ; his Spirit was too big to sit still and bear blows : and yet pre-adviling himself about the poverty of the people, and that their patience would be spent soon after their supplies, if they continually saw much going out, and nothing coming in ; he had a rule upon his private expences, a good gloss upon the publick, and a platform for the augmenting of the Treasure of the Kingdom, as well for the benefit of the people, as of the Crown. In order to the first, it is considerable, that the Royal Family was great and numerous above all his Predecessors : that besides the King and Queen who were of a gallant and accomplisht deportment, they had a Son, a Prince of as great renown as ever Prince had, & he also a Family suitable to his generosity : that they had other children, every one like their Father, both for War and Peace ; and that for the maintenance of all these, the expences must be in reason larger than formerly they were

were wont to be; nevertheless, because purveyance for the King had already swelled so big, that all other oppressions seemed to be swallowed up into that one, the King to moderate the rigour thereof made nigh twenty Statutes, first excluding all servants at wages; and Horses and Dogs which were put to board with the Sheriffs: then reducing the purveyance only to the Families of himself, his Wife, and Children, then to the Families of himself, the Queen, and Prince: and in the levy hereof, some mens estates were absolutely privileged, and some kind of goods, as sheep before shearing, and Trees about the dwelling house. Nor is the settling of the manner less considerable. It must be levied by Authority in writing under the seal: and it must not be taken against the owners will, or upon malice; nor must be spared for reward; the price must be the same with the true Market-price; the measure according to the common measure stricked, and the payment must be immediately, if the price be under twenty Shillings, if above, it must be made in a quarter of a year, and no man must charge more carriage than is necessary, and thus was this wild Ivy of purveyance that like some kinds of plants spreads over all, by rooting up and cutting down, brought into some kind of fashion, that if it did no good it might do the less hurt unto the people.

Secondly, although it be true that *Edward* the Third was a King of many Taxes above all his Predecessors, yet cannot this be imputed as a blot to the honour of the Law, or liberty of the people; for the King was not so unwise, as either to desire it without evident cause, or to spend it in secret or upon his own private interests, nor so weak and irresolved as not to employ himself and his Souldiers to the utmost to bring to pass his pretentions, nor so unhappy as to fail of the desirable issue of what he took in hand: so as though the people parted with much money, yet the Kingdom gained much honour and renown, and becoming a terrour to their Neighbours, enjoyed what they had in fuller security, and so were no losers by the bargain in the conclusion. Secondly, although they parted with much, yet nothing to Prerogative

but in a Parliamentary way; and so it was not taken but given. Thirdly, though the Taxes were frequent, yet but light; for frequent light Taxes steal insensibly without regret, and as they grow into matters of course, so they meet with acceptance of course. Two things made them of light account. First, they were not Taxes altogether of Money in kind, but of goods, such as the sheaf and fleece, and such like things, whereof the ownership is visible, whereas many are supposed to have Money which have it not, but must borrow it or sell their goods at an under rate many times to accomplish it for the payment of their Taxes. Secondly, these Taxes were assessed by the Neighbourhood, and not upon extremity of Survey, by Commissioners, who many times are subject to miscarry upon grounds of private Interest, or for want of due information, or by making more hast than good speed.

5 E. 3. cap 6.

These Taxes likewise were reduced to the ancient rule, according to the Statute of *Westminster* the first. And thus did this King shew himself truly Royal in demanding his Taxes upon evident grounds of State, levying them with a tender hand, and employing them to their right end.

25 E. 3. c. 11.

Thirdly, that which digested all, and bred good blood, was in that the people had *quid pro quo*, by the advance of Trade; wherein the King shewed himself the Cape Merchant of the World. Certainly, mens parts in these times were of vast reach, that could manage such Wars, settle such a Government, and lay such a foundation of a Treasury by Trade, a thing necessary to this Island, next unto its own being, as may appear, not only in regard of the riches of this Nation, but in regard of the strength thereof, and in regard of the maintenance of the Crown; the two latter of which being no other than a natural effluence of the former, it will be sufficient to touch the same in order to the thing in hand. Now as touching that, it's evident that the riches of any Nation are supported by the Conjunction of three regards.

First, That the natural Commodities of the Nation may be improved.

Secondly,

Secondly, That the poorer sort of people, be set a work.

Thirdly, That the value of Money be rightly ballanced.

For as on the one part, though the people be never so laborious, if the natural Commodities of the Island be not improved by their labour, the people can never grow much richer, than barely for subsistence during their labour: so neither can the improvement of the natural Commodity enrich the Kingdom, so long as many mouths are fed upon the main stock, and waste the same by idleness, and prodigality: Nor though both these should concur, yet cannot the Kingdom be said truly to be rich, unless by intercourse and Traffick, there be an emptying out of the superfluity of such Commodities by way of barter, or otherwise, for such Foreign Commodities, whereof this Nation standeth in most need, for supply of all occasions. For God hath so attempered the whole Regiment of the earth, in such manner, that no one Nation under Heaven, can well and comfortably subsist in, and by it self, but all must give and receive mutual Commodity from each other: otherwise, superfluity would make any Commodity (though in it self never so precious) vile; and little conducive to the enriching of the Nation. Now for the compassing of all these the Wise Men of these times, first took into their consideration the principal Commodities of this Kingdom, and because they found them impounded in the Staple, they set all at liberty to buy and sell the same as they pleased: And thus began a Free-Trade of Wool, throughout the Realm. and matter for employment by every man that would: but this continued not long. The people soon had Commodity enough for work, and Kings liked too well of the restraining of that liberty, in order to their own benefit, and soon found out occasions to reconcile the reason of State with their own Interests, and at length settled the Staple in certain places in several parts of the Kingdom; but this extended only unto the Commodities of Wool, Leather, and Lead; for as yet the Manufactures were not come to Maturity.

*2 E. 3. cap. 9.*

*27 Rich. 2. c. 3.*

city. Secondly, the endeavour was to advance Manufacture, and principally such of them as are made of the Staple Commodities, amongst all which, Wool had the precedency; as being the most principal and ancient Commodity of the Kingdom; and the Manufacture of Wool of long use, but had received little encouragement before these times. For that it formerly had been the principal flower in the Flemish Garden, and nourished from this Nation, by the continual supply of Wool that it received from hence, which was the principal cause of the ancient League between the House of *Burgundy*, and this Crown. But *Edward* the Third; was now too well acquainted with the Flemings Affairs, by a joynt Engagement with them in the Wars of *France*, and therein had gained so good an opinion amongst them, that he might adventure to change a Complement for a Conrtesie. The Staples beyond the Sea were now taken away, he now inhibiteth the Importation of Foraign Cloaths, and having gained these two steps onward of his way, he represents to the Flemings their unsettled Condition, by these bordering Wars with *France*; the peaceable Condition of *England*, and Freedom of the people; then propounds to them an Invitation to come over into *England*, promiset them share and share like with his own people, with such other Immunities, as they take his offer, come over, and brought their Manufacture with them, which could never after be recalled: So as now the Wool, and Manufacture dwell together, and like to Man and Wife, so long as they care for one another, both will thrive; but if they come to play their games apart; both will be losers in the Conclusion.

The third step to the advance of Trade, was the Exportation of the surplussage of the Staple Commodities, that remained over and besides that proportion that should suffice for the Manufactures; to which end, it was ordered, that no Wool should be Exported till it had remained at the Staple by the space of fifteen days. That time was necessary, and longer time might have been Convenient, but that the Markets

11 E. 3. cap. 2.  
3. 5.

31 E. 3. c. 2.



Markets beyond the Sea could not be delayed longer time, without much damage to the Merchant and Owner, for as much as Winter-time is no time to prepare Wool for the Manufacture, and by over-long continuance of the Commodity upon the hand of the Merchant, or Owner, both the Commodity, and the Manufacture might surfeit, lye in despair, and Trade choaked thereby. For it's a necessary preparative to Trade, to keep the Nation in some kind of hunger after the Staple Commodities, so as the main stock be not too great to occupy, and yet to leave enough to use. But because this Nation formerly had been, and as yet were used too much to Foreign Manufactures, the Importing of which, did debase the Home-made Manufactures, and discouraged that work; therefore the Law was made to reduce the vanity of Apparel, (which infected these times) to more Sobriety.

Some delight in Foreign Commodities, and Manufactures, is doubtless profitable both for Trade and Shipping; so as what is Imported, exceeds not what is Exported: for too much of that makes the Domestick Commodity contemptible, the Nation poor, and the people want work, because it's a noted vanity of this Nation, That they love things far fetcht, and dear bought. As a cure therefore to this disease, English Cloth by Law is enjoined to be worn by all persons, under the Degree of a Lord, and so the former Inhibition of Importation of Foreign Cloths was strengthened thereby. And because the English Clothiers should not take advantage hereby, to raise the price of their Cloths to their own covetous pin: Therefore the Law also settled a certain price and measure, and the same before sale was to be allowed upon view, and for the goodness of the Cloths, and perfect working thereof; Laws were likewise made against Exportation of all such as were not perfectly made.

43 E. 3. c. 1.

11 E. 3. c. 2, 3.

27 E. 3. c. 4.

7 Rich. 2. c. 9.

17 Rich. 2. c. 2.

50 E. 3. cap. 7.

A fourth step in the advancement of Trade, was the compelling men to work; for when publick employment calls men forth for service in the Field; their minds once in Commotion, or upon the Wing, can hardly settle any where, or

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36 E. 3. c. 8.

23 & 25 E. 3.  
2 Rich. 2. c. 8

floop to the Perk again, unless upon hope of prey or gain to be gotten thereby. Such were the times of *Edward* the Third, wherein partly for that cause, and partly for the scarcity of men left from the Sword and Pestilence, not only workmen were scarce and dear, but even the Mass it self was grown stately, the private delights of Kings and great Men, and scarce vouchsafing to be seen by common gaze, but at a great distance: The Priests had little Charity, and the poor had as little money; so as no peny, no *Pater Noster*. A sick and very crazy time questionless was it, when the Clergy were stately, and the poor idle. The Priests wages for this cause, are now settled, and they that would get much, must get many littles, and do much: but the greater fore was amongst the poorer sort; either they would not serve, or at such wages, as could not consist with the price of the Cloths, and the subsistence of the Clothier. Laws therefore are made to compel them to work, and to settle their wages; so as now it's as beneficial to them to serve the meaner sort of Clothiers, as the richer sort: For the Master must give no more, nor the Servant take more, and thus became labour currant in all places.

A fifth means to advance Trade, was the settling of a Rule upon Exportation and Importation: this wrought a double effect, *Viz.* The enriching of this Kingdom with Foraign Commodities, and the maintaining of Shipping, which was and is a principal means, not only of riches, but of strength unto all Sea-bordering Countries, especially regard being had to these three considerations.

First, That Importation do bring in more profit, than Exportation disburseth.

Secondly, That both Exportation, and Importation be made by Shipping belonging to this Nation, so far as may consist with the benefit of this Nation.

Thirdly, That the Exportation be regulated to the overplus, saving the main stock at home. The truth of the first will be evident from this ground, That no Nation can be rich that receives more dead Commodities from abroad, than it can spend

at

at home, or vend into Foreign parts, especially if it be vended in its proper kind, and not in Money; and therefore the Laws provided, that no Merchant should Export more Money, than <sup>27 E. 3.</sup> he Importeth, and what he doth Export must be of the new stamp, which it seemeth was inferiour in value to the old: yet the times may prove so penurious, that this rule may be waved for a season.

The second is no less beneficial; for as it is in War, so in all Trades; the greater the number is that is employed, the more effectual the Issue will be: and therefore though it in the general be more beneficial, that all Exportation and Importation might be by our own shipping; yet in regard times may be such, as now they were, that the shipping of this Nation is more then ordinarily employed for the service of the State: And that every Nation striveth to have the benefit of Exportation by Vessels of their own.

And Lastly, in regard the case may be such, as Importation may be, at a cheaper rate by Foreign Vessels, and Exportation likewise may for the time be more prejudicial to this Nation, if done by our own shipping, than those of other Nations. Therefore the course must be changed, so far forth as will stand with the occasions of the State, and common profit of this Nation. And for these causes, and such like, in the times whereof we now Treat, the Laws often varied; sometimes no Staple Com-<sup>27 E. 3.</sup>modity must be Exported in English bottoms; sometimes all<sup>43 E. 3. c. 1.</sup> must be done by them, and within a year again that liberty<sup>5 Rich. 2. c. 3.</sup> was restrained; and after that, liberty given to Foreigners to<sup>6 Rich. 2. c. 8.</sup> Export as formerly.<sup>14 Rich. 2. c. 5.</sup>

The third and last Consideration is as necessary as any of the former; for if Trade be maintained out of the main stock, the Kingdom in time must needs be brought to penury, because it is their Magazine: and for this cause it was<sup>31 E. 3. c. 8.</sup> provided, that all Wool should remain at the Staple fifteen days, to the end it might be for the Kingdoms use: if any one would buy, they must do it within that time, otherwise it might be exported.

6. The sixth means of advancement of Trade, was the settling of the Staple; for as it was an encouragement to the first establishing of the Manufacture, that the Staples were let loose, so when the Manufactures had taken root, the Staple especially now fixed to places within this Kingdom, brought much more encouragement thereto.

First, For preserving a full Market, for whilst the Commodity lies scattered in all places, the Market must needs be the leaner; partly in regard the Commodity lies in obscurity, and partly because when it is known where, yet it's not easily discovered whether it be vendible or not; and besides small parcels are not for every man's labour, and the greater are not for every man's money.

Secondly, Staples are convenient for the stating of the general price of the Commodities; in regard the quantity of the Commodity is thereby the more easily discovered, which commonly maketh the price. And the quantity of the Commodity thus discovered will not only settle the price to it self, but also balance the price of the Manufacture.

Thirdly, The Staple having thus discovered the quantity of the Commodity, will be a ready way to settle the quantity of the main Stock, that must be preserved, and regulate Exportation as touching the over-plus. But it cannot be denyed that the first and principal mover of the making of the Staple, was the benefit of the Crown: for when the Commodity was gone beyond the Sea, it importeth not to the Subjects in *England*, whether the same be sold at one place, or more, or in what place the same be settled, until the Manufacture was grown to some stature; and then the place became Litigious. The benefit of Exportation, pretended much interest in the settling thereof beyond the Sea, but in truth it was another matter of State; for when it was beyond Sea, it was a moveable Engine to Convey the King's pleasure or displeasure, as the King pleased; for it was a great benefit to the Country, or place where ever it settled; or else it moved or stayed according to the inclination of the people where it was, either for War, or Peace. But on the

the contrary, the Interest of the people began to interpose strongly : And for these Causes the Parliament likewise intermeddled in the place ; and thus the Scene is altered : sometimes it's beyond the Seas, in one place, or in another : sometimes in *England*. In *Edward* the Third's time, we find it sometimes at *Calis*, sometimes in *England*: In *Richard* the <sup>43 H. 3. cap. 1.</sup> Second's time; we find it again beyond the Seas, at *Middle-* <sup>12 Rich. 2. c. 16.</sup> *burgh*, thence removed to *Calis*, and after into *England*: <sup>14 Rich. 2. c. 11.</sup> where at length the people understood themselves so well, that the Parliament settled the same, it being found too burthenfome for the Manufactures to travel to the Staple beyond the Seas, for the Commodity that grew at their own doors, besides the inhanling of the price, by reason of the carriage, which falling also upon the Manufactures, must needs tend to the damage of the whole Kingdom. This was one way indeed, and yet possibly another might have been found; for if a Computation had been made of the main Stock, and a Staple settled within the Kingdom for that, and the over-plus Exported to a Staple beyond the Sea, it might have proved no less commodious, and more complying. It is very true, that there are many that call for the liberty of the people, that every man may sell his own Commodity as he pleases; and it were well that Men would consider themselves as well in their Relations, as in their own personal respects: for if every man were independent, his liberty would be in like manner independent; but so long as any Man is a Member of a Common-wealth, his liberty must likewise depend upon the good of the Common-wealth; and if it be not good for the Nation, that every Man should sell his own Commodity as he pleaseth; he may claim the liberty as a Free-man, but not as an English-man; nor is that liberty just, so long as his Countrey hath an interest in his Commodity for it's safety and welfare, as in his own person. I do not assert the manner of buying the Staple Commodities, by Merchants of the Staple, to sell the same again in kind for their private advantage; divers limitations must concur to save it from an unlawful ingrossing; nor doth it appear to

me that the Staplers in these times used such course, or were other then meer Officers for the regulating of the Staple, in nature of a Court of Piepowders, belonging to some Fair, or Market. Nevertheless, I conjecture that it may well be made evident from principles of State, that Mart, Markets, and Staples of Commodities, that are of the proper Off-spring of this Nation, are as necessary to Trade, as Conduits are to places that want water.

7.

The seventh and last means that was set on foot in these times, for the advance of Trade, was the regulating of the Mint, and the current of Money. This is the life and soul of Trade, for though exchange of Commodities may do much, yet it cannot be for all, because it is not the lot of all to have exchangeable Commodities, nor to work for Apparel, and Victual. Now in the managing of this trick of Money, two things are principally looked unto; First, that the Money be good and current. Secondly, that it should be plentiful. As touching the excellency of the Money, several Rules were made, as against embating of Money, against Foreign Money not made current, against counterfeit and false Money: For according to the goodness of the Money, so will the Trade be more or less, for the Merchant will rather lose in the price of his Commodity in Money, than in exchange for other Commodity, because the value thereof is less certain, and the Transportation more chargeable.

25. E.3. Stat 5  
cap. 13.  
6 E. 3. cap. 2.  
§ 3.

Secondly, as touching the plenty of Money, that is as necessary to the advance of the Trade, as of the goodness of it: for according to the plenty thereof, will be the plenty of the Manufactures, because Handicrafts-men having no Commodities but their labour, cannot work for exchange, nor can exchange supply Rents and maintenance to the greater sort of people. To this end therefore it is provided against melting of Money, and Exportation of Silver and Gold: And yet to encourage or not discourage Importation of Silver and Gold, liberty was given to every man to Export so much as they did Import, provided that what they carry away, must be of the new stamp, or Minted in this Nation. By this means Bullion came in with proba-

6 E. 3. c. 2, 3.  
17, Rich. 2. c. 1.

probability, that much thereof would remain in the Nation in <sup>27</sup> E. 3. lieu of Commodities exported, or if not, the greater part; yet at least the Mint gained, and that was some benefit to the Nation.

Thirdly, for the fuller currence of the Money, the Issue was established in several parts of this Kingdom; according to the ancient custom, and this was advantageous both to the Mint, and to the stock of Money in the Kingdom. This establishment was with this difference, that though the Mint was settled by the Parliament, yet the Exchange was left to the Directory of the King and his Council; because the Exchange is <sup>18</sup> E. 3. c. 6. an uncertain thing, subject to sudden alteration in other Nations, and it's necessary that in this Countrey, it be as suddenly <sup>18</sup> E. 3. c. 7. <sup>25</sup> E. 3. Stat. 5. ballanced, with the Exchange in other Countreys, or in a short time, the Nation may receive extreme damage. In regard whereof, and many other sudden exigencies in Trade, it seemeth to me convenient, That a particular Council were established for continual influence into all parts of these Dominions, to take into consideration the quantity of the Staple Commodities, necessary to be retained as a Stock at home, for the use of the people, and the Manufactures; and accordingly to ballance the Trade of Exportation and Importation; by opening and enlarging, or shutting, and straitning the Stream, as occasion doth require.

And lastly, to watch the course of the Exchange in Foreign parts, and to parallel the course thereof, in this Land thereto: For otherwise, the publick must necessarily suffer, so long as private men seek their own particular interests only in their course of Trade.

## CHAP. VIII.

*Of Legiance, and Treason, with some Considerations  
upon Calvin's Case.*

**A**S times change manners, so do manners change Laws: For it's the wisdom of a State, when it cannot over-rule occasion to pursue and turn it to the best issue it can. Multitude of Laws therefore are not so much a fore to the people, as a Symptom of a fore people; yet many times Laws are said to be many; when as they are but one, branched into many particulars, for the clearing of the peoples understanding, (who usually are not excellent in distinguishing,) and so become as new Plaisters made of an old Salve, for sores that never brake out before. Such fore times were these, whereof we now Treat, wherein every touch made a wound, and every wound went to the heart, and made the Category of Treason swell to that bigness, that it became an *individuum vagum*, beyond all rule, but the present sence of timerous Judges, and a touchy King. Thus were many of the ignorant and well-meaning people in an hideous danger of the gulf of forfeiture before they found themselves nigh the brim.

All men do agree that Treason is a wound of Majesty, but all the doubt is, where this Majesty resteth originally, and what is that Legiance which is due thereto, the breach whereof amounteth to so high a censure; for some Men place all Majesty in one Man, whom they call an absolute Monarch. Others in the great men, and others in the people, and some in the concurrence of the King and body of the people: and it is a wild way to determine all in one conclusion, when as the same dependeth wholly upon the constitution of the body; look then upon *England* in the last posture, as the rigid sort of Monarchial politicians do; and Majesty will never be in glory, but in the concurrence of the King and Parliam-  
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ment, or convention of Estates, and so upon the whole account it will be upon the people, whose welfare is the supreme Law. Rome had Kings, Consuls, Dictators, Decemviri, and Tribunes long before the Orator's time, and he saw the foundation of an Empire, or perpetual Dictatorship in the person of the first of the *Cæsars*; any of all which might have challenged the supremacy of Majesty above the people: and yet the often change of Government shewed plainly that it rested upon another pin; and the Orator in express words no less; when speaking of the Majesty of that Government, he alloteth it not to those in chief command, but defineth it to be, *magnitudo populi Romani*; afterwards when the pride of the Emperours was come to its full pitch in the times of *Augustus* and *Tiberius*; an Historian of those times in the life of *Tiberius* tells us, that he declared the bounds of Treason to be determined in three particular instances, of Treachery against the Army; Sedition amongst the people, and violating the Majesty of the people of Rome; in all which men were not punishable for words; but actions and endeavours. I do not herein propound the Government of the Roman Empire as a model for England, but *à majori*, may conclude, that if the proper seat of Majesty was in the people of Rome when Emperours were in their fullest glory, it's no defacing of Majesty in England to seat it upon the whole body, from whom the same is contracted in the representative and so much thereof divided unto the person of the King, as any one member is capable of, according to the work allotted unto him. These several seats of Majesty making also so many degrees, do also imply as many degrees of wounding, for it's written in nature, that the offence tending to the immediate destruction of the whole body is greater than that which destroyeth any one member only; and when the written Law maketh it Treason to compass the destruction of the King's Person, it leaveth it obvious to common sense, that it's a higher degree of Treason to compass the destruction of the representative, and above all, to destroy the whole body of the people, crimes that never entred into the conceit of wickedness it self.

self in those more innocent times ; much less saw they any cause to mention the penalty by any written Law. Nevertheless because many sad examples had occurred within the memory of this present Age, of the danger of the person and honour of Kings ; and yet on the other side they saw that in such cases of Treason the King's honour was made of reaching Leather, and might easily be strained within the compass of a wound of Majesty : therefore *Edward* the Third imitating *Tiberius*, reduced the crime of wound of Majesty in the Person of the King, into certain particular instances, out of the compass whereof, the Judges of the Law in ordinary course must not determine Treason. These concern either the safety of the person of the King, or of the succession in the Royal Throne ; or lastly, the safeguard of the publick right by the board and Privy-Seal, the value of Money, and by persons in matters of Judicature judicially presiding, all of them reflecting upon the King, considered in his politick capacity ; for otherwise many crimes might have been mentioned, more fatally reflecting upon the King in his natural capacity, which nevertheless are omitted as not worthy of so high a censure. Other Treasons

25 E. 3. Stat.  
5. cap. 2.

17 R. 2. n. 10,  
21.  
3 R. 2. n. 18.  
22. Ass. pl. 29  
Stat. 11 R. 2.

are left to the determination of the Parliament as occasion should offer it self, whereof divers examples of a new stamp occurred within forty years next ensuing, which were of a temporary regard, and lived and died with the times.

To these two notions of Majesty and Treason, I must add a third, called Legiance, for it is that which maketh Majesty to be such indeed, and lifteth it into the Throne, and whereof the highest breach makes Treason : and because that which hath been already said reflecteth upon an opinion, or rather a knot of opinions (for I find them not punctually adjudged) in *Calvin's Case*, I must a little demurr to them, because as their sense is commonly taken ; it alters the fundamental nature of the Government of this Nation from a Common-weal to a pure Monarchy. In handling of this case the honourable Reporter took leave to range into a general discourse of Legiance, although not directly within the conclusion of the case ; and therein first sets down the general nature thereof, that

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it is a mutual bond between an English King and his people; and then more particularly sets forth the nature of this bond in the several duties of obedience and fealty, *fo. 5. a.* and those also in their several properties, *Viz.* natural, absolute, *fo. 7. a.* due to the King *omni soli & semper, fo. 12. a.* in his natural and not publick capacity, *fo. 10. a.* whereas he saith, this bond is natural, he meaneth that it's due by birth, *fo. 7. a.* By absolute (if I mistake him not) he meaneth, that it is indefinite, *fo. 5. b. Viz.* not circumscribed by Law, but above Law, and before Law, *fo. 13. a.* and that Laws were after made to enforce the same by penalties, *fo. 13. b.* and therefore he concludeth that this legiance is immutable, *fo. 13. b.* and *fo. 14. a.*

Thus having stated the point as truly as I can, both for the nature of Legiance, and the object thereof, *Viz.* the King, and not the people, otherwise than in order to the safety and honour of the King's person, considered in his natural capacity as he is a Man; I shall in the next place examine the grounds as they are severally set down, and therein shall lead the Reader no further than the Reporters own concessions. Not troubling the Reader with any doubt, whether this bond consists in obedience only, or in that fealty: and in all shall ever be mindful of the honour of that Pen with which I have to deal.

First, whereas it is said, that English Legiance is natural, and grounded upon the birth of each party within the King's Dominions and protection, it needeth no debate, so as the same be taken, *sans sensu, Viz.* for a qualified Legiance beared off those sublimities of absolute, indefinite, immutable, &c. for otherwise if such a high strain of Legiance be due from every English-man by birth; then all the *Magna Charta*, or Laws concerning the Liberties of the people come too late to qualifie the same, because they cannot take away the Law of nature, *fo. 14. a.* and thus the party once born English must for ever remain absolutely obliged to the King of England, although haply he lives not two Months under his protection all his ensuing life time.

Secondly,

Secondly, the Legiance of an English-man to his King ariseth from that civil Relation between the two callings of King and Subject, and therefore it is not a natural bond which cannot be taken away. The first is true by the Reporter's own concessions; *Proteſſio trahit ſubjectionem*, & *ſubjectio proteſſionem*; ſo he ſaith, *fo. 5. a. fo. 9. b.* and therefore though it be granted that Magiſtracy in general is from nature, as he ſaith, *fo. 13. a.* yet of weak birth is that inference which he maketh, *Viz.* That English Allegiance is a principle in nature. Unless it be alſo admitted that all Men on earth that ſubmit not to English Legiance do ſin againſt nature. The difference then will ſtand thus, Magiſtracy is founded in nature, therefore Legiance alſo. But English Magiſtracy is from civil conſtitution, therefore is English Legiance of the like nature. In the next place, the Reporter ſaith, that before any municipal Law was made, Kings did *dare jura*, and he mounts as high for an example as the Trojans Age by the Teſtimony of *Virgil*: but I believe he intended not much ſtrength in this, ſeeing it's well known by any that knows the Scriptures, that there were municipal Laws given, and that concerning the office of a King by *Mofes*, which were more ancient than thoſe of *Troy*, and long before the time of *Virgil*, who neither tells us in what manner thoſe Trojan Laws were made, though the Kings gave them, nor if all were according to the Reporters ſence, is the teſtimony of a Poet (who ſometimes uſeth his *Poetica licentia*) to be taken in *terminis*. In the next place, the Reporter vouches the Teſtimony of *Fortefcue*, *c. 12. & 13.* which is as abſolutely oppoſite to the main point in hand, as any Pen can declare. for he tells us of divers ſorts of Kingdoms, ſome gotten by Conqueſt, as thoſe of *Nimrod* and *Belus*, &c. But ſaith he, there is a Kingdom politick, which is by the aſſociation of men by conſent of Law, making one chief, who is made for defence of Law, and of his Subjects Bodies and Eſtates, and he cannot govern by any other power; and of this nature, ſaith he, the Kingdom of *England* is, *fo. 30, 31, 32.* A ſecond piece of the foundation of this opinion of the Reporter is taken, *ab inane*, it is a vain thing, ſaith he, to preſcribe Laws but

but where by Legiance foregoing, people are bound to obey: but this compared with the words of *Fortescue*, formerly mentioned, falls of it self to dust, and therefore I shall not further enlarge concerning it.

Thirdly, The Reporter brings in to help the matter, the consent of the Law in elder times, by certain Cases vouched to that purpose; the first concerning the Legiance of Children to Parents, which cometh not to this case, because it is a Legiance of Nature, and this Legiance whereof we speak is yet under a litigious Title. And I suppose will in the conclusion be found to rest only upon a civil constitution, therefore I leave that. The second is, that a Man attainted and outlawed, is nevertheless within the King's protection for this (saith the Reporter) is a Law of Nature, *Indelibilis & immutabilis*, and neither Parliament nor Statute can take this power away, *fo. 13. b. 14. a.* and therefore the Reporter concludes, that as well the Legiance of the Subject as the protection of him by the King are both of them from the Law of Nature. An opinion that speaks much mercy, yet it seems strange, considering the Pen; for if it be a Law of Nature, and immutable, for the King to protect persons attainted, then must no such person suffer, for if he be under the King's protection, that being by a Law of nature, cannot be changed by any positive Law, as the Reporter saith, nor can the King be so bound, by any such Statute, but by a *non obstante*, he can set himself at liberty when he pleaseth, and then the issue will be this, the King hath a natural power to protect the persons of Law-breakers, from the power of the Law, therefore much more their Estates; and then farewell all Law, but this of the King's Natural protection. I say that these are of a high strain, considering what the Reporter speaketh elsewhere. But to pursue his instance, he saith, that the King hath power, to protect an attainted person, that if any Man kill him without warrant he is a Man-slayer; and yet this person attainted hath lost the legal protection. It's true, yet not to all intents, for by the sentence of the

35. H. 6. 63.

Law, his life is bound up under the Law of that Sentence, *Viz. That he must not suffer in other manner than the Sentence determineth, nor before Warrant of Execution issue forth to that end.* And notwithstanding the Sentence, yet the Law leaveth him a liberty of Purchase, or Inheritance, though to the use of the Crown, and therefore in some respects, the Law protects his Person so long as he lives, and the King's Natural Protection is in vain in such Cases.

Lately, suppose the King hath a power of *Non obstante*, if the same be allowed to him in a limited way by the Law, it is no Argument to prove the King's natural power, which is driven at under natural Legiance, much less if it cannot be made forth that the Law doth allow any such power of *Non obstante* at all; but by the iniquity of the times, permitteth the same to subsist, only to avoid Contention, as it came into this Kingdom by way of Usurpation. And thus I have only discovered the Foundation of this first qualification, which I shall only leave naked, supposing that no man seeing it, will build at all thereupon.

The second property that cometh to be considered, is, *That English Legiance is absolute, fol. 5. b. fol. 7. a.* which is a word of a vast extent, serving rather to amaze men's apprehensions, than to enlighten them; and therefore the Reporter did well not to trouble himself or the Reader, in the clearing or proof thereof, but left the point rather to be believed, than understood, nor shall I in the Negative; for God himself can have no other Legiance from an Englishman, than absolute Legiance; and Kings being (as other men) subject to err, especially in this point of Prerogative, are much rather subject thereto, being misled by such Doctrines as these are; the Scripture determines this point, and cuts the knot in *As. 14. 19.* *Sunder.*

The third property of English Legiance, which the Reporter insisteth upon, is that it is indefinite; which he explaineth to be, *Proprium quarto modo*, so as it both Universal and Immutable, *fol. 5. b. fol. 12.* and neither defined by Time,

Time, Place, or Person : As touching the Time, and Person, the Reporter enlarged not at all, therefore I shall only leave the Reader to chew upon the point, supposing himself in the first times of *Edward* the Fourth, when *Henry* the Sixth, was then alive; and let him resolve to which of them his Legiance had been due, considering them both in their natural capacity, as the Reporter would have it. But as touching the place, it's reported that English Legiance is not only due from an English-man, to an English King in *England*; but in all places of the King's Dominions, though otherwise Foreign, as to the power of the Law of *England*: yea, saith the Reporter, as far as the King's power of protection doth extend. And yet this had not been enough, if the Premises be granted: for if this Legiance whereof we speak be absolute, and *omni soli & semper*, then is it due to the King, from an English-man, *ubivis Gentium*. Nevertheless, to take the Reporter in a moderate sence; it is worth consideration, whether English Legiance in the days of *Edward* the Third, extended as far as the King's power of protection; when as he had the Crown of *France*, in a Foreign right to that of *England*. In this the Reporter is extremely positive upon many grounds which he insisteth upon.

First, he saith, that *Verus* and *Fidelis* are qualities of the mind, and cannot be circumscribed within the predicament of *Ubi*; and upon this ground he might conclude, that this Legiance is due to the King, from an English-man all the world over, as well as in all the King's Dominions; but concerning the ground, it may be denied, for though simply in it self considered as a notion, Verity or Fidelity are not circumscribed in place, yet being qualities of the Soul, and that being in the body, in relation thereunto, it may be in the predicament of *Ubi*; for where-ever that Body and Soul is, there is Faith and Truth, according to it's model, which though not absolute, and indefinite, yet if according to the Laws of the place wherein the Man is, he is truly said to be *Verus & Fidelis*.

Secondly, the Reporter argueth, that the King's protection

is not Local, or included within the bounds of *England*; therefore also is not the Legiance: for, *Proteclio trahit Legiantiam, & Legiantia Proteclionem*: Had this reason been formed into a Syllogifm, it had appeared lefs valuable; for the proteclion of an English King, *qualis*, of an Englishman, is local and included within the bounds of the Kingdom: But if the fame King be also King of *France*, or Duke of *Aquitane*; and an Englishman shall travel into thofe parts, he is ftill under the fame King's proteclion, yet not as King of *England*, but as King of *France*, or Duke of *Aquitane*; otherwife, let the party be of *France*, or *Aquitane*, or *England*, all is one, he muft be (whether French or English) under an unlimited abfolute proteclion, without regard had to the Customs or Laws of the place; yea, contrary to them, which I believe the Reporter never intended to affirm.

Thirdly, The Reporter falleth upon the matter in Fact; and tells us, that the King of *England*, did many times, *De faclio*, grant proteclions to perfons in places out of the English Confines, and it will not be denied: But never was any abfolute and indefinite proteclion fo granted; for the proteclion extends to defence from injury, and all injury is to be expounded and judged according to the Laws of the place: Nor do any of the Precedents vouched by the Reporter clear, that the King of *England* did grant as King of *England*, Proteclion to any Englishman in any parts of the King's Dominion beyond the Seas, which was not qualified according to the Laws and Customs of that place: efpecially it being apparent, that an English King may hold Dominion in Foreign parts, in Legiance under a Foreign King; as *Edward* the Third, held the Dutchy of *Guien*, and therefore cannot grant abfolute proteclion in fuch place, nor receive abfolute Legiance from any perfon there being.

Fourthly, The Reporter faith, That the King of *England*, hath power to command his Subjects of *England*, to go with him in his Wars, as well without the Realm of *England*, as within the fame; therefore the Legiance of an Englishman,



man to his King, is indefinite, and not local, or circumscribed by place, or within the Kingdom of *England*. Although the first of these be granted, yet will not the inference hold, for possibly this may arise from the constitution of a positive Law, and not from Natural or absolute Legiance, nor doth any Authority by him cited justify any such Legiance: But I cannot agree the first; for it is not true, that the King hath any such power from his own personal interest; nor doth the Authority of former Ages warrant any such matter: for a fuller disquisition, whereof I shall refer the Reader to the eleventh Chapter ensuing, because the *Whole matter concerning the Militia, cometh there to be handled in course.*

Fifthly, To close up all the rest, the Reporter brings; *The Testimony of the Judges of the Common Law, out of the Testimony of Hengham; wherein an Action was brought by a French woman, against an English man, who refused to answer, because the Plaintiff was a French woman, and not of the Legiance or Faith of England:* This was disallowed by the Judges, because Legiance and Faith was referred to *England*, and not to the King. Thereupon the Defendant averred, that the Plaintiff is not of the Legiance of *England*, nor of, the Faith of the King: And upon this plea thus amended, the Plaintiff gave over her Action. The Reporter from hence observeth, that Faith and Legiance is referred to the King, indefinitely, and generally; and therefore it is so due to him. The reason might have had more force, had the Object of Allegiance, or the nature thereof; been the point in question; but neither of them coming to debate, and Allegiance being subjected to *England*, and Faith to the King. I see not what more can be concluded from hence, but that Allegiance from an English man is due to *England*, and Faith to the King, which I suppose must be intended to be in order to that Allegiance; because by the former plea, *England* had them both, and the King was wholly left out in the Case. Nevertheless, I rather think that the present point in controversy, will receive little light here from on either part.

We are now come to the fourth property of English Legiance, that it is due to the King's Natural Capacity, and not to his Politick Capacity, or due to the Office of a King, in regard of the Person of the Man, and not to the Person in regard of the Office, *fol. 20.* And because this is of no small importance, neither easily understood, nor granted: Therefore he backeth his Opinion by many reasons.

First, he saith, that the King sweareth to his Subjects in his Natural Capacity, therefore the Subjects swear to him in his Natural Capacity. This reason was intended to be taken from Relatives, and then it should have been thus: *A King doth swear to his Subjects in their Natural Capacity, therefore Subjects swear to a King in his Natural Capacity:* but it being otherwise it is mistaken, and proves not the Point. Yet if we should take the Reporter *in sano Sensu*, there is no question but the Oath is made to the Natural Capacity; yet not Terminative, more than the Oath of the Tenant to his Lord, which this Author pleaseth to couple with the mutual dependence between King and Subject, *fol. 4. b. 5. a.* Nor doth the Oath of an Englishman bind him to the Obedience of all, or any Commands, which the King shall give in relation only to his Natural Capacity, or in opposition to his Politick Capacity: Nor will the Reporter himself allow that the Politick Capacity of the King, can be separate from his Natural Capacity, *fol. 10.* And yet it is evident that a King may in his Natural Capacity command that, of which his Politick Capacity cannot give Allowance.

The second reason of this Opinion, is taken from the nature of Treason, which saith the Reporter is committed against the Natural Person of the King, and this is against due Legiance, according to the form of Indictments, in that Case provided. This is not demonstrative, because that crime which is done against the Natural person of a Man, may as well extend to it, in relation to his Place, or Office; and so may Treason be plotted against the Natural Person of a King, as he is King; neither is there any other difference between the murder of a King, and

and a private Man, but only in regard of the Place and Office of a King, which makes the murder of him Treason; for which cause all Indictments that do conclude, *Contra Legiantie debitum*, do as well also conclude, *Contra Coronam & Dignitatem*, &c.

The third reason is this; A body politick, can neither make nor take Homage, 33 H. 8. Bro. tit. Fealty: Therefore cannot the King in his Politick Capacity take Legiance. The first must be granted only, *sub modo*, for though it cannot take Homage immediately, yet by the means of the Natural Capacity, it may take such service; and therefore that Rule holds only where the Body Politick is not aggregate, and not one Person in several Capacities, for the Tenant that performs his service to his Lord, performs the same to his Lord in his Natural Capacity, but it is in relation to his Politick Capacity, as he is his Lord: For Lord and Tenant, King and Subject, are but Notions, and neither can give nor take service; but that Man that is Lord, or Tenant, or King, or Subject, may; even as the power of protection is in a King, not as he is a Man, but as a King.

The fourth reason is this, The King's Natural Person hath right in the Crown by Inheritance, therefore also in the Legiance of the Subject. This is the strength (as nigh as I can collect) of that which is set down as a sixth reason, but I make it the fourth; because the third as I conceive is but an illustration of the second; and the fifth is upon a supposal of a *Fides fita*; whereas that Faith of an English Subject, which is according to Law, is the truer of the twain. But to the substance of this fourth reason: If the first be granted, yet the Reporter cannot attain his conclusion; for the King may in his Natural Capacity, have right to the Crown by Inheritance, and yet not right in the Legiance of his Subjects, otherwise than in the right of the Crown; As in the Case of Lord and Tenant, the Lord may inherit the Lordship in his Natural Capacity, but the service is due to him as Lord, and not as by Inheritance in the service in the abstract. And though it be granted that the Legiance to a King,

King, is of a higher strain, than that of a Tenant to his Lord, fol. 4. b. 5. a. Yet doth the Reporter bring nothing to light, to prove them to be of a different Nature in this regard.

The fifth and last reason that cometh to consideration, is, from a Testimony of the Parliament; for it is said, That this damnable Tenet of Legiance to the King in his Politick Capacity, is condemned by two Parliaments: But in truth I can find but one under that Title, that mentioneth this Opinion, and that is called, *Exilium Hugonis*, which in sum is nothing else; but Articles containing an enumeration of the particular offences of the two *Spencers* against the State, and the Sentence thereupon: The offences are, for compassing to draw the King by rigour, to govern according to their wills: for withdrawing him from hearkning to the advice of his Lords, for hindering of Justice, and Oppression; and (as a means hereunto,) They caused a Bill or Schedule to be published, containing that Homage and Legiance is due to the King, rather in relation to the Crown, than absolutely to his Person; because no Legiance is due to him, before the Crown be vested upon him: That if the King do not govern according to Law; the Leiges in such case are bound by their Oath to the Crown; to remove him either by Law or Rigour.

This is the substance of the Charge, and upon this exhibited in the Lords House, the Lords, *super totam materiam*, banish them before their Case is heard, or themselves had made any appearance thereto: So as to the matter of this Schedule (which contains an Opinion suitable to the point in hand, with some additional aggravations) the Parliament determineth nothing at all: but as to the publishing of the same, to the intent to gather a party, whereby they did get power to act other enormities mentioned in the Charge; and in relation to those enormities, the Lords proceeded to sentence of banishment; all which was done in the presence of the King, and by his consent, as may appear by his discontent thereat, as all Historians of those Affairs witness; and it is not probable that the King

King would have been discontented with the proceedings of the Lords in asserting the Prerogative of a King, in that manner of the Schedule, if he had perceived any such thing in their purposes. Add hereunto that the Lords themselves justified the matter of the Schedule in their own proceedings, all which tended to enforce the King to govern according to their Councils, and otherwise than suited with his good pleasure: By force they removed *Gaveston* from the King's presence formerly, and afterward the *Spencers*, in the same manner: So they removed the King from his Throne, and not long after out of the World.

Last of all, I shall make use of one or two Concessions, which hath passed the Reporter's own Pen ( in this discourse of his ) for the maintaining, that the Legiance of an English-man, is neither Natural, nor Absolute, nor Indefinite, nor due to the Natural Capacity, but qualified according unto Rules.

The first is this, English-men do owe to their Kings, Legiance according to the Laws, therefore is it not Natural, or Absolute, or Indefinite. The inference is necessary, for the latter is boundless, and Natural; the former is limited, and by civil Constitution: If any breach therefore of English Legiance be bounded by Law, then the Legiance of an English-man is circumscribed, and not Absolute, or Natural. The major proposition is granted by the Reporter, who saith, that the Municipal Laws of the Kingdom, have prescribed the order and form of Legal Legiance, *fol. 5. b.* And therefore if by the Common Law, the Service of the King's Tenant, as of his Mannor, be limited, how can that consist with the absolute Legiance formerly spoken of, which bindeth the Tenant, being the King's Subject, to an Absolute and Indefinite Service: Or if the Statute-Laws have settled a Rule, according to which each Subject ought to go to War in the King's service beyond the Sea, as the Reporter granteth, *fol. 7. & 8.* Then cannot the Legiance be absolute to bind the Subject to go to War according to the King's own pleasure.

Secondly, An English King's protection of his Subjects, is not Natural, Absolute, Indefinite, nor Originally extendeth unto them in their Natural Capacity: therefore is not the Legiance of an English Subject to his King, Natural, Absolute, Indefinite, nor Originally extendeth to the King, in his Natural Capacity.

The dependence of these two resteth upon the Reporters own words, who tells us, that *Protectio trahit Subjectionem*, & *Subjectio Protectionem*; Protection draws with it Subjection, and Subjection draws with it Protection, so as they are *Relata*, and do prove mutually one anothers Nature, *fol. 5. a.* And in the same Page (a few lines preceding) he shews why this Bond between King and Subject is called Legiance, because there is a reciprocal, and double Bond: for as the Subject is bound in Obedience to the King, so is the King bound to the Subject in protection: But the King is not Naturally bound to protect the people, because this Bond begins not at his Birth, but when the Crown settles upon him.

Thirdly, this Protection is not absolute, because the King must maintain the Laws, *fol. 5. a.* and the Laws do not protect absolutely, any man that is a breaker of the Laws.

Fourthly, This Protection is not Indefinite, because it can extend no further than his power, and his power no further than his Dominions, *fol. 9. b.* The like also may be instanced in continuance of time.

Lastly, the King's protection extendeth not originally to the Natural Capacity, but to the politick Capacity; therefore till a Foraigner cometh within the King's Legiance, he cometh not within his protection: And the usual words of a Writ of Protection shews, that the party protected, must be in *Obsequio nostro*, *fol. 8. a.* The sum then is, that as protection of an English King, so neither is Legiance, or Subjection of an English man Natural, Absolute, Indefinite, or terminated in the Natural Capacity of the King. And to make a full period to the point, and make the same more clear, I shall instance in one Precedent, that these times of Edward the Third produced. The former English Kings, had Title to many Territories in

France,

France, but Edward the Third, had Title to all the Kingdom : And being possibly not so sensible of what he had in possession, as of what he had not ; He enters *France* in such a way, and with that success, that in a little time he gains the highest seat therein, and so brought much honour to the English Nation ; and more than stood with the safety of the Kingdom. For in the union of two Kingdoms, it's dangerous for the smaller, lest it be swallowed up by the greater.

This was foreseen by the English, who knew *England* did bear but a small proportion to *France*, and complained of that inconvenience ; and thereupon a Law was made, that the people of *England*, should not be subject to the King, or his Heirs, as Kings of *France* : which manifestly importeth, that an English King may put himself in such a posture, in which Legiance is not due to him ; and that this posture is not only in Case of Opposition, but of diversity, when he is King of another Nation, and doth not *de facto*, for that Time, and Place, rule as an English King : which if so, I suppose this notion of Natural, Absolute, and Indefinite Legiance to the King in his Natural Capacity is out of this Kingdom, if not out of the World : and then the foot of the whole Account will be, that the Legiance of an English-man, is Originally according to the Laws : The sum of all, being comprehended in the joynt safety of the people of *England*.

14 E. 3. Stat. 4.

## CHAP. IX.

*Of Courts for Causes criminal, with their Laws.*

THE great growth of Courts founded upon Prerogative, derogated much in these times from the Ancient Courts, that formerly had attained the Sovereignty over the people, and in the hearts of them all. This was a hard lesson for them to learn, but especially of the King's Bench, that was wont to learn of none; and yet must be content to part with many of their Plumes to deck the Chancellor, much of their work to buse the Prerogative Courts, holden *Coram Rege*; and more to those holden *Coram Populo*. I mean, *The Courts of Oyer and Terminer, Gaol-delivery, and Justices of Peace*. Those of *Oyer and Terminer*, were now grown very common, but less esteemed; as being by men of mean regard nominated for the most part by the party that sued out the Commission, which for the most part was done in behalf of those that were in danger, and meant not to be justified by Works, but by Grace. These escapes, though small in the particulars, yet in the full sum made the matter so foul, as it became a common grievance, and a Rule thereupon set by the Parliament, for the regulating both of the Judges of such Court, and the Causes. The Commissions for *Gaol-delivery* likewise, grew more mean and ordinary: The chief sort of Men in the several Counties, had formerly the power, but were found to favour too much of Neighbourhood, and Alliance; the leading of the work therefore, is now committed to the Judges at *Westminster*, and the other made only Associates to them. But above all, the Courts of Sheriffs, Coroners, and Leets, were now grown sour with Age, having attained courses by common practice, differing from Oppression only in Name; and yet were the times so unhappy, as by these courses they had obtained



tained favour, and respect, amongst the great men, and so gained more power from above to abuse them below. These men loved to be Commissioners of Oyer and Terminer, and having learned how to make capital offences pecuniary, found such sweetness, as they used not to be weary of their places, though the Countrey grew weary of them; and therefore disliking uncertainties, in such matters of benefit, they cannot rest till they obtain more certain settlement in their places; some for years, others for life, and some for ever. The disease thus contracted by degrees, the cure must be accordingly: First the Sheriffwicks much dismembred to please the Court-Favorites, and fill the King's privy purse, and all raised to the utmost peny of the full, and beyond the just value. A Law is made to restore the several Hundreds, and Wapentakes, <sup>4 E. 3. c. 12.</sup> to the Sheriffs and their Counties, and all of them are reduced to the old Rent; and it is likewise provided that none shall execute that place in County or Hundred, who shall not then have sufficient Lands in that County to answer damages for injustice by them done. And that no Sheriff shall serve in that place above one year; and then not to be chosen again for that service, till three years be past: which latter clause was only a *medium* taken up for the present occasion, in regard that men of ability became very rare in these times, especially, in some of the Counties. <sup>2 E. 3. c. 4.</sup> The election of the Sheriff is likewise not to be forgotten, <sup>4 E. 3. c. 4.</sup> for though the Countyes had the election of Coroners in regard they looked that no man should come nigh their blood, but whom they trusted, yet the Sheriff came not so nigh their skin, nor yet so nigh their Free-holds, as <sup>28 E. 3. c. 6.</sup> anciently they had done, for that their power in judicature was much abated; and so not worthy of so high regard; yet in respect he was still to be a Minister of Justice, and his place valuable more than formerly, it was holden convenient that such as had the chief power of Judicature at <sup>14 E. 3. c. 7.</sup> *Westminster*, *Viz.* the Chancellour, Treasurer, Chief Baron, and the two chief Justices, should nominate the Man that

that should be their Servant, and in the Parliament nevertheless, interposed in that Election as often as they saw cause.

Secondly, As touching Causes criminal, which more ordinarily come within the cognisance of these Courts: They generally held the same regard in the eye of the Law in these times that they had done formerly; nevertheless, in two crimes these times wrought diversly, urging the edge of Law against the one, and abating it as to the other. The latter of these is commonly called, *Petit Treason*, which is a murder destructive to the Common-wealth, in an inferiour degree, and at a further distance, because it is destructive to that Legiance, by which Families do consist, and of whom Kingdoms are derived.

*Mirror Just.*  
*cap. 2. sect. 13.*  
*21 E. 3. fol.*  
*17. b*

In former times it extended unto the Legiance between Lord and Tenant, and Parents and Children: but by this Law of 25 E. 3. it is reduced to the Legiance only of Man, and Wife, Master, and Servant, Clerk, and his Ordinary: the last of which was now lately taken up; and might have been as well laid aside, as divers others were, but that in these times much is to be yielded to the power of the Prelacy, who loved to raise the power of the Ordinary, to an extraordinary pitch, that themselves might be the more considerable.

This reducing of Treason into a narrower ground, made the Regiment of Felonies to swell: A hard thing it was in a Warring time, for Men to conceit themselves well drest, until they were compleatly Armed: Some used it for a Complement, and amongst others, honest men had as good cause to use it, as some that were ill affected, had a bad; and of the last sort, some did aim at private revenge, though many aimed against the publick quiet. But however the intentions of men thus harnessed might be different, the looks of them all are so sour, that it's hard to know a Man for peace, from a Man for War. And therefore the people were now so greedy after Peace, as they are ready to magnifie, or multiply all postures of Armed Men into the worst fashion, being well assured that the

the readiest way to keep themselves from the hurt of such men, is to have none of them at all. But *Edward* the Third had more need of them than so, and will therefore allow Men to ride Armed, but not to Troop together, to rob, kill, or imprison any Man; and if any person did otherwise, it should be Felony, or Trespass, but not high Treason.

All this was in favour to the people, and yet it was not all; for when Mercy groweth profuse, it becomes cruelty. Murder is very incident to times of War, yet is an Enemy to the Peace, of so high a Nature, that though the King's pardon may do much, yet both King and people declare it an unpardonable crime, by the Common Law, and that the King's Prerogative shall not extend so far, as to pardon the same. This Justice done to the party dead, was a mercy to them that were alive; a means to save blood by blood-shed, and not so much by the King's grant, as by his Release. One thing more in these cases of blood, the people obtained of the King, which they had not so much by Release, as by Grant, and that was the taking away of *Englshire*, an Ancient Badge of the Imperial power of the Danes over the Saxons, and which had either continued through the desiduousness of the Saxons, in the times of *Edward* the Confessor, unto the Normans time, or by them taken up again, and continued, until these times that *Edward* the Third was so far desirous to declare his readiness to maintain the Liberties of the people, as to be willing to restore them where they failed, and in particular took away the manner of presentment of *Englshire*; blotting out the Title and Clause concerning it, out of the Articles of inquiry for the Judges *Itinerant*. And thus whether Native or Foraigner all men are now made in death equal, and one Law serves all alike.

Next unto blood, these times grew more sensible of Ravishments, than former times had done: For though they had determined a severe penalty against so foul a Crime, and made it in the nature of a Felony capital; which was enough

6 Rich.2.c.6.  
5 E.4.fol.58.

enough to have scared any man from such attempts, yet for the proof of the matter in Fact, much rested upon the will of the Woman, which for the most part grounded upon self-respects, and private prudence, laboured to conceal that which could not be made whole by revealing; and by after-consent skin'd over the sore as to themselves, which corrupted inwardly, and endangered the whole body; to cure which, a Law is made to restrain such late connivance in the Woman, by depriving her both of her Joyncture, and Inheritance, which otherwise had been saved to her by such compliance, as after consent unto such violations.

## CHAP. X.

### *Of the Course of Civil Justice, during these times.*

**H**OWEVER the course of the Law concerning matters of the Crown, passed in a troubled Wave, yet in matters of Common Pleas, it passed in a calm and full Channel; as the Reports in Print do sufficiently witness, nor was there any change of principles, but only some alteration tending to a clearer manifestation of the same. I will not touch upon every particular, but only upon two, which reflect somewhat upon the publick policy; the one touching the course of Inheritance in some particular Cases; the other touching pleading in the Courts of Civil Justice.

The first of these was occasioned from Conjuncture of Affairs, the Case being such, that *Edward* the Third had now gotten himself a new Kingdom unto that of *England*, and must look to maintain that by power, which he obtained by force, and conducting thereunto, must have continual employment of the English in that Service, as being most trusty to his Cause. And that it is unreasonable, that such English as had devoted themselves to his Service in this Cause, and in order there-

thereunto, had transported themselves, and their Families into those Foreign parts, should thereby loose the benefit of Leiges, in the Birth-right of their Children, born in those Foreign parts. Upon consideration had hereof, and of a former leading Opinion of the Lawyers and Parliament, a Declarative Law was made; *That all Children born without the King's Legiance, whose Father and Mother at the time of their Birth, shall be under the Faith and Legiance of the King of England, shall have the benefit of Inheritance within the same Legiance, as other Inheritors have.* These are the words of the Statute, and do occasion a double observation; one from the matter, the other from the manner of the Expression.

The Subject matter is so delivered, not as an Introduction of a new Law, but as a Declarative of the old, that lay more obscurely hidden, for want of occasion to reveal it, and the substance thereof reflecteth only in this, to enable the Children of English Natives, born beyond the Seas; not the Children of those that are of Foreign birth, though within the King's Territories in those parts, as the opinion hath been; nor doth any ancient Precedent or Case, warrant the same, as might be at large manifested, if it might conduce to the end of this discourse: and for the same cause, after this Statute; when as the Commons would have had a general Naturalizing of all Infants born beyond the Sea, within the King's Segniories; the same would not be granted, otherwise than according to the former Statute, and the Common Law.

That which in the next place concerneth the manner of expression is this, That a Child is said to be born out of the King's Legiance, and yet the Father and Mother at the same time to be of the Faith and Legiance of the King of England: It seemeth to me, that it intendeth only those Children of English Parents, born within the King's Territories beyond the Seas, because the words ensuing, concerning Certification of Bastardy of such Children, are, that the same shall be made by the Bishop of such place upon the

King's Writ directed to him, which could never have passed into those places that are not of the King's Territories: and so the Issue will be, that the Legiance of those born in those parts, though they are Leiges to the King, yet they are not of the Legiance of the King of *England*, but as Lord of that Territory.

36 E. 3 c. 15. The other matter to be observed concerning pleading in the Courts of Civil Justice, is this, That whereas anciently, from the Normans time, till these times, the pleadings were in the Norman Tongue, they shall be henceforth in English. out of an inconvenience, I believe, rather supposed than felt: for though some kind of knowledge of Law-terms may be encreased thereby, yet unless that shall be professedly studied, it will breed nothing but Notions, and they an over-weening conceit, which many times sets Men to Suits in Law, to their own loss; like some weak influence of the Celestial Bodies, that are strong enough to stir up humours, but not to expel them, or draw them out. However, even thus in part is the reproach of *Normandy* rolled away, like that of *Egypt* from the Israelites at Mount *Gilgal*.

## CHAP. XI.

### *Of the Militia in these times.*

WAR is ever terrible, but if just and well governed; Majestical; the one may excite resistance and defence, but the other Conquers before blow given; because it convinceth the judgement, and so prevails upon the Conscience: For that heart can never be resolute in its own defence, that is, at War with its own understanding; nor can such a heart consider such a War, otherwise than as Divine, and bearing the face of an Ordinance of God; and then how can the Issue be unsuccessful. It is no strange thing.

thing for Kings to miscarry in their Wars, because it's rarely seen that they are under good Council; but if a Christian Council miscarry, we may conclude it extraordinary, in the efficient Cause, and no less wonderful in the issue, and end. Upon this ground, it concerneth a Christian Nation, not only in point of Honour, but of safety and continuance, to settle fundamental Laws for War, against time of War; as of Peace in time of Peace. Neither was *England* deficient herein, saving that ancient times were more obscure in the particulars, and these days revealed them at such a time, wherein we may say, that *Edward* the Third, approved himself, not only King of *England*, but of himself, above the ordinary strain of expectation; for being now become a famous Commander and Conquerour, having also an Army inured to fight and overcome, and so might have given a Law; he nevertheless received the same, submitting both it and himself to the Directory of the Parliament, in making a War with *France*, which was three to one against him in every respect, (but in the Title) besides the disadvantage from *Scotland*, that lay continually beating upon his Rear. The like may be observed of his War with *Scotland*, in both which he evidently telleth the World, that he held it unreasonable to enter upon the managing of an offensive Foraign War, without the concurrence of the common consent of the people; and that not onely for the thing it self, but also for his own Personal Engagement in the Service. For a King, though he be the *Generalissimo*, yet is he so from the people, and his Person being of that high value, is not to be exposed to every occasion, that may provoke War, without due advice first had with the publick Council, because in his Person the people adventureth as well as himself. And in this manner were the Wars in *France* by *Edward* the Third, and in *Scotland*, concluded upon debate. In the next place, as touching the arrays of Men for War, I find no foot-steps of any power which was claimed as peculiar to the King therein, and acknowledged by the Parliament; but many

instances do I meet with in the opposite; all which do plainly tell us, that the old shifts of *Jurati* and *Obligati ad arma*, could do little either in the calling of men forth, or arming them for the War. But in case of publick defence against Foraigners, men were summoned upon their Legiance as anciently was used. And this was by both King and Parliament fully declared, and all such obligations by writing called in and damned as dishonourable to the King. In Foraign service the course was no less regular; if the War was by especial direction of the Parliament, they likewise ordered the manner of the raising of Souldiers, *Viz.* So many out of a County, and so many out of a Burrough, all which are by the expresse words of the Statute, said to be granted by the Knights and Burgessees. But if it was only upon the King's particular insfigation and not by order or consent of the Parliament, the King in such cases being *Voluntier*, all the Souldiers were in like manner; unless some particular Law, or Tenure, otherwise obliged them. As touching the Arming of Soldiers; the Law was yet more certain and particular. If the Soldiers were men of Estate, they were armed according to the ancient rule, asserted by the Statute at *Winton*, or otherwise were especially assessed by the Parliament, or by vertue of their Tenures; the first of these is confirmed by *Edward* the Third in Parliament, wherein he willetth that no man shall be urged to arm himself otherwise than he was wont in the times of his Ancestors Kings of *England*. The two latter were likewise confirmed by another Law, made in the same King's time; whereby it was ordained that no Man shall be constrained to find Men of Arms, Hoblers, nor Archers, other than those which hold by such services, if it be not by common consent and grant made in Parliament. By men of Arms meaning those which we now call *Curiaffaires*, or compleat armed; by Hoblers meaning those now called light Horse-men. The Archers served on Foot, and were principally armed with Bows, although they had also Swords or other such offensive portable Weapons.



The first of these concerneth only the arming of a Man's own person, the other the finding of Souldiers, and arming of them, and both together sufficient for the safe-guard of the Rights and Liberties of the People, invaded in those times, by Commissions of array; and such other expressions of Prerogative Royal; for as touching the arming of a Man's own Person, the Statute of 1 Edward 3. formerly mentioned, is clear in the point. And though the Statute of 25 Edward 3. doth not in the letter direct, as touching the finding Arms for others as is urged in his Majesty's Answer to the Declaration of the Parliament, concerning the Commission of Array, *July, 4. 1642.* yet is it therein granted, that a complete Soldier is within the Letter of the Statute; and seeing the person of the Soldier is not in the power of any private person in such cases to command him to the service, it seemeth clear to me that the Statute must intend the arming of him with compleat Arms, and not the armed person of the Man. The Soldiery thus arrayed, they are in the next place to be called by their Rendezvouz; the Knights by summons sent to the Sheriff, but the rest by Proclamation. If the Knights appear not, a fine is set upon them; if others run away from their conduct, a Writ issued to the Serjeant at Arms to apprehend them; if they were not arrayed, then the recognisances of such as undertook the work are estreated. All plunder or spoil committed by the Soldiers in their conduct, was to be satisfied by the Conductor, or Commander, that received their Pay, or Charges for their Conduct: And although the charges for Conduct had formerly, *De facto*, been defrayed sometimes by the County, by vertue of Commissions that issued forth, both for the raising and conducting of them; yet was this no rule, nor did Edward the Third claim any such duty, but disclaimed it, and ordained by Act of Parliament, that both the Pay and Conduct-Money, should be disbursed by the King, from the time of their departure from their several Counties. For to this end (and for the safe-guard of the Realm, And for

Fol. 418.

Pat. Rot. 3 E.  
3. n. 18.  
Regist. fol. 192.  
a.

4 E. 3. cap 5.

50 E. 3. n. 62.

1 E 3. c. 7.

18 E. 3. c. 7.

the

14 E. 3. Stat. 2  
cap. 1.

1 E. 3. Stat.  
2. cap. 5.

13 E. 3. n. 18.

20 E. 3. n. 14.

1 E. 3. Stat. 2  
cap. 5.

the maintenance of the Wars of *Scotland*, *France*, and *Gaſcoign.*) The King had ſupply from Aids, Reliefs, Wardſhips, Marriages, Customs, and Eſcheats; nor did the Parliament grant any particular Aid by Aſſeſſment or publick Tax, but when they evidently ſaw the burthen of War, to be extraordinary; as it beſel in the Conqueſt of ſo great and potent a Realm as *France* was: Wherein although the Taxes were many, yet ſo well ordered were they, and with that compliance from the King, that the people indured them with much patience, ſo long as the King lived. Laſtly, in all theſe Caſes of Foreign Wars (for of ſuch Caſes only theſe Laws are to be underſtood) it was eſpecially provided, that no man ſhould be diſtrained, or urged againſt his will, to go out of his County. But in Caſe of deſenſive War; the courſe was otherwiſe, for all Men in ſuch Caſes are bound by the Law of Nature, to defend their own Countrey from Invaſion, in order to the ſafety of their own Eſtates and Habitations. They were arrayed, or gathered together by Commiſſion of Array from the King, Armed according to the Laws formerly mentioned, and not by Arbitrary order of the Commiſſioners: And by vertue of ſuch Commiſſions, they were drawn forth and led to places where need required. Sometimes to one Coaſt, ſometimes to another, yet not altogether at the King's pleaſure, for the Parliament upon occaſion ſet rules of reſtriction, and generally exempted the North-parts beyond *Humber*, from being drawn South-ward, and left them as a reſerve, for the defence of the Marches, bordering upon *Scotland*; and ſometimes ordered, the Array ſhould be executed only in ſome particular Counties, and other times wholly exempted the Countrey adjacent, within ſix miles of the Sea-Coaſt. And becauſe the King might under colour of a defence Array the people, where no ſuch occaſion led the way, and command them out of their Counties, a Statute is made that ſtates the Caſe wherein ſuch Array ſhall be; the words whereof are variously ſet forth in the Books in Print, whether

whether determinatively, or carelessly, I cannot tell, but all of them do differ in sence one from another, and from the Truth; some of the common Books have the words thus: *None shall be distrained to go out of their Counties, unless for cause of necessity, and of sudden coming of Strangers, or Enemies, into the Kingdom:* Others read it thus, *But where necessity requireth, and the coming of strange Enemies into the Kingdom.* The King's Answer to the Parliaments Declaration, concerning the Commission of Array, would read it thus, *Unless in case of Necessity, or of sudden coming of strange Enemies, &c.* But the words in the Roll are these; *Et que nulls ne soient distresses d'aller hors de les Countees, Si non pur Cause de necessity, de suddaine venue, des Stranges Enemies, en Regaulme;* In English thus, word for word: *And that none be distrained to go out of the Counties, if not for cause of Necessity, of sudden coming of strange Enemies into, or in the Kingdom:* which words determine the point, That none shall be by Commission of Array, drawn out of their County, but in case of Necessity: And secondly, that this Case of Necessity, is only the coming of strange Enemies into, or in the Kingdom, so as probably the Invasion must be Actual before they be drawn out of their Counties, and not only feared; and it must be a sudden Invasion, and not of publick note, and common fame foregoing, for then the ordinary course either of Parliament, or otherwise, must be used to call those that are bound by Statute, or Tenures, or Voluntiers to that service, seeing every Invasion is not so fatal, as to require a Commission for a General Array. Against what hath been thus noted, the judgement of Sir Edward Coke in Calvin's Case lies yet in the way, who affirmeth, that the Subjects of England are bound by their Legiance to go with the King in his Wars, as well within the Realm, as without; and this Legiance he telleth us, is that Natural Legiance which he saith, is Absolute and Indefinite, &c. and not Local, which if not so, than were not the English bound to go out of England; an inference that is neither necessary, nor is the thing affirmed certain. It is not necessary, because

Fol. 422.

Fol. 7. b.

England-

English-men may be bound to go out of *England*, by vertue of their Tenures, particular Contract, or else by special Act of Parliament, and not by vertue of that Natural Legiance, which in truth is no where.

11 H.7. cap 1.  
2 E.6. c.2.

Now for the maintenance of the point, the Reporter alledgeth two Statutes affirming the thing, and Common practice; and lastly, Authorities of the Judges of the Common Law. As touching the Statutes, one in *Henry* the Seventh's time, and the other in *Edward* the Sixth's time: I shall speak of them in the succeeding times, when we come at them, for they are no Warrant of the Law, in these times whereof we now treat; much less is the modern practice of these latter days, a Demonstration of the Law in the times of *Edward* the Third, nor of the Nature of the Law in any time, seeing that it is obvious to times, as well as particular persons, to do and suffer things to be done, which ought not so to be; and therefore I shall for the present lay those two Considerations aside. But as touching the Opinions of the Judges of the Common Law, two Cases are cited in the Affirmative, which seem in the Negative, and the rest conclude not to the point.

7 Hen. 4.  
Protect. 100.

The first of the two Cases, is the opinion of Justice *Thirning* in the time of *Henry* the Fourth, word for word thus: *A Protection lies for the Defendant in a Writ, upon the Statute of Labourers, and yet the Defendant shall not have such matter by way of Plea, viz. That the King hath retained him to go beyond the Sea: for the King cannot compel a Man to go out of the Kingdom, That is (as the Reporter saith) Not without Wages*; intimating thereby, that if the King shall tender Wages to any Man, he must go whither the King shall please to send him, which is not only destructive to the opinion of *Thirning* concerning the plea, but also (though granted) is destructive to the Reporter's Judgement in the main point: For if an English-man may refuse to go without Wages, then is he not bound to go by any natural absolute Legiance, as the Reporter would have it. And as touching the second Case, which is *Bigot's* and *Bohun's* Case, it cleareth the same

same thing; for it was resolved, that they ought to go but in manner and form, according to the Statutes, then is not the ground in the absolute Legiance, for that is not qualified; but in the positive Statute-Law, which tieth only in manner and form, and that by voluntary consent in Parliament.

The rest of the Cases, do neither conclude the main point, nor the particular thing that the Reporter intendeth: for he would imply to the Reader, that English-men were anciently used to be impressed for the Wars in *France*: and hereunto he voucheth one Authority out of ancient Reports of Law, in *Edward* the Third's time, one Authority in the time of *Henry* the Fourth, and three in the time of *Henry* the Sixth; none of all which do speak one word concerning impressing, and that in *Edward* the Third, doth imply the contrary; for the Case is, that in a *Præcipe quod reddat*, a protection was offered by the Defendant, as appointed to go beyond Sea with the Duke of *Lancaster*; and the Plaintiff's Council alledged that the Defendant had been beyond Sea, with the Duke, and was returned: To this the Defendant's Council answered, that the Duke was ready to return again; and for this cause the protection was allowed: Yet a *Quere* is made upon this ground, that it might be that the Defendant would not go over with him, nor was it proved that he would, which sheweth plainly, the party was not impressed, for then the thing had not been in his power to will or nill.

The last instance that the Reporter produceth, is that of *Forinsecum Servitium*, or Foreign Service, and that seemeth to be Knight-service to be performed abroad: But this falleth short of the Reporter's intention in three respects.

First, Though it belongeth to the King, yet not to him only, but to other chief Lords, so saith *Brañon*.

Secondly, It is not due from every English-man:

And lastly, It is a Service due by vertue of Tenure, and then the Conclusion will be, That which is due by Tenure of Lands, is not due by natural and absolute Legiance: and

to this Foreign Service, arising meerly by compact, and agreement between Lord and Tenant, and not by the natural duty of an English-born Subject, (which is the thing that the Reporter driveth at in all this discourse) will be so far from maintaining the Reporter's opinion, as it will evidently destroy the same.

And thus the posture of this Nation, in the Field remaineth regular in the rule, whatever hath been said against it; notwithstanding, that in the very instant of Action, there may be some irregularity, which no doubt both was, and ever will be, in stormy times; nor did it conquer the Law: For though War may seem to be but a sickness of the State, yet being in Truth, as the *Ultimum refugium*, and only reserve unto Law, beaten to a retreat by oppression: It is no wonder if this motion, or rather commotion that brings on the Law of peace in the Rear, be still and ever subject to a rule of Law, how unruly soever it self seemeth to be. Now because Law imports execution, and that presupposes a Trial, and it a Court; therefore did our Ancestors (amongst other Courts not regulated by the Common Law) form a Court for the Service of War, called the Court Martial, or the Constables Court, according as the Office of one or the other, had the preheminance. The proceedings herein, were ordered as I said, not according to the Common Law, for that is like the Land, much distant from all other Nations, and the negotiation of this Island with other Nations, (as in time of Peace, so of War,) require a rule common to all those Nations, or otherwise no negotiation can be maintained: And for this cause, the proceedings in this Court, were ever according to the rule of the Civil Law: The work of this Court is principally judicial, and in some Cases Ministerial.

The first reflects upon causes Foreign and Domestick, and both of those, are either Criminal, and such as concern the common Peace of the place of War, or more civil, relating only unto private interest. As touching the first of these, I suppose it is no Bull, to speak of a Common peace, in the place

place of War; for a common peace must be in each party within it self, or otherwise no party at private variance can subsist within it self, much less make War with the other; and therefore in order unto War, there must be a Law of Peace, for the Trial of Offenders, and punishing them, for offences committed against the good Government of the War; such as are breaking of Ranks, deserting the Standard, running away from the Colours, Mutinies, Murthers, Rapes, Plunderings, private quarrels, disobedience to command and such like; all which do bear the shew of Crimes against the Common Peace of the Army, and the Countrey.

Of the second sort, are matters concerning Quarter, and Contracts in order to the government of the War, saving such as are made, before either part be Inrolled for the War: For if a Mandoth covenant to serve in the War, and keepeth not his day at the first Rendezvous, he is to be attached by Writ at the Common Law. Causes Domestick likewise fall under the like division: for whatsoever Cause may be Foreign, may also be Domestick; because the Army is ever imbodyed within the Kingdom, and must be under the Directory of the Martial-Law, upon the first forming thereof. Now though the particular Laws of the Army, for the government thereof, be ordinarily according to the prudence of the General, yet certain Fundamentals have been *ab Antiquo*, made by Custom, and the Parliament, against which the course of Judicature must not go; and as the Parliament saw need, it set also particular Directions, as for the payment of Soldiers wages, for remedy of wastings and plunderings in their own Countrey, and other such Emergencies. But the execution of all these Laws Originally, was in the Martial of the Army, and because that the Army was generally dissolved, or such persons engaged in such matters of Controversie, departed from the Army, before the same were concluded. Therefore the Marshalls-Court continued in order, to the determining of these matters; and in continuance of time, other matters also crowded into that Society, although sometimes under the Directory

13 Rich. 2.  
Stat. 1. cap 20.  
8 Rich. 2. n 31.  
8 Rich. 2. c. 5.  
Regist. fol.  
191. 2.

50 E. 3. n. 33.  
n. 161.  
3 R. 2. n. 27.

of the Constable of *England*, as well as at other times under the Marshal; more particularly, that power of determining matters concerning *Torniamet*, a sport that like a *Sarcasm* tickles the fancy, but wounds the heart, and being of as little use in a *Common-Wealth*, as of benefit; therefore is laid aside, nor need I to speak any more concerning it. There is one thing more, somewhat like a *Torniamet*, but that it is in good earnest, and that is called *Duel*. This cometh likewise within the Cognisance of this Court, but in a Ministerial way, and as subservient to the Common Law, in Cases of Appeal and Right: Hereof needs likewise little more than the naming, and therefore, I shall leave the Reader that would understand the particular managing thereof, unto the discourse compiled by the Duke of *Glocester*, in *Richard* the Second's time.

*Gloss. 129.*

Lastly, As touching the Antiquity of this Court, though it may be great, yet the power thereof was doubtful, and scarce taken notice of in any publick Act of State, till about these times; when as a complaint was made by the Commons, for the encroachment of that Court, upon the liberty of the people, and bounds of the Courts of Common Law; Nor is it strange, that such unquiet times brought forth such Precedents; but much more strange that the Common Law held up its head against such violent irruptions of War.

## CHAP. XII.

### *Of the Peace.*

**Y**OU have seen the Kingdom in Armour, now see it in Robes, and you will say that its Majesty therein is as grave, as it was in the other brave. It's true, the tempers are so contrary, as it may be wondred how one and the same should be wise and willing for both: but when God will do



do much, he gives much, and can make a people as one Man, like unto *Caleb* fitted both for War and Peace: Besides, the times were now much conducing hereto, it's vain to endeavour to allay humours in the body, which are maintained by Agitation; they must be purged out, or the whole will still be endangered: and therefore although Kings hitherto did endeavour to establish a peaceable Government, yet being led by ill Principles of private Interests, they laboured to little purpose: but now the Scene is altered, and one wise moderate King, that was as wise as valiant, did more than they all: And first set a rule upon his own desires, contenting himself with the condition of an English King; and then upon his people, making them contented with the condition of Englishmen.

The order herein was no less observable; for the former wrangling times having trained up the minds of men in a tumultuous way, nor could they skill to pace in the steps of peace, the King led them into Foreign parts to spend their heat, till being either weak or weary, they are contented to return home, and study the happiness of a quiet life: these men thus ordered, the rest at home are made more cool, like a body after Physick, and all are now contented to submit to Law and Magistracy. A fitting time now it was for Justices of Peace to come upon the Stage in their best garb: For though the work was more ancient, yet like some loose notes laid aside in several places, it was not to be found, but at a distance, and after long delay. But *Edward* the Third, sums up all into one brief, and brings a complete model thereof into the World for future Ages to accomplish, as occasion should lead the way. The course was now established to have Justices settled in every County, there to be resident and attending that Service. First, they were named Guardians, or Wardens of the Peace, but within a few years altered their Title to Justices. First, they were chosen out of the good and lawful men of each County: After that they were two or three chosen out of the worthyest Men, and these were to be joyned with Lawyers. Then was one Lord  
and

<sup>1</sup> E. 3. cap. 16.  
<sup>1</sup> E. 3. n. 5.  
<sup>17</sup> E. 3. n. m.  
<sup>1</sup> E. 3. cap. 6.  
<sup>18</sup> E. 3. cap. 22.

- and three or four in each County of the most worthy men, adjoyned with Lawyers. Afterward in *Richard* the Second's time, the number of Justices in each County might attain to the number of six, and no Steward of any Lord to be admitted into the Commission; but within half a year all is at large, so be it that the choice be out of the most sufficient Knights, Esquires, and Gentlemen of the County. Again, within two years, the number in each County, is set at eight, yet in all these, the Judges and Serjeants were not reckoned, so as the work then seemeth not so much as now a days, although it was much of the same kind; and yet it grew up into that greatness which it had by degrees. Before they were settled by *Edward* the Third, there were *Custodes pacis*, which might be those whom we now a days call the High-Constable of the Hundred whose work was purely Ministerial.
- 34 *E. 3. c. 1.*  
12 *R. 2. c. 10.*  
14 *R. 2. c. 12.*

- Afterward about the second year of *Edward* the Third, the Guardians of the peace had power of *Oyer* and *Terminer*, in matters of riding aimed upon the Statute 2 *Ed. 3.* After that, they have power of enquiry by Indictment in certain Cases, within four years after they have power of *Oyer* and *Terminer* in Cases of false Jurors, and maintenance: and about ten years after that, they obtained like power, in matters of Felony and Trespas. The way of Commissions in case of life and member thus opened; another occasion of Commission offers it self for a determinative power, in case of offences against the Statute of Labourers, and the Cognisance hereof is soon settled upon Commissioners in the Counties specially chosen for that Service, which questionless as the times then stood, was as commendable work as it was necessary: For Soldiers were so many that Labourers were very few; and those that once are accustomed to Arms, think ever after meanly of the Handicraft; nor will they ever stoop thereto after their Spirits are once elevated by Mastery of Adventures. And secondly, those few Labourers that remained of the Sword, Plague, and other disasters of these wasting times, understood their advantage, and set a value upon their labours, far above their merit; ap-  
pre-
- 25 *E. 3.*  
Stat. 4. c. 7.  
34 *E. 3. c. 11.*

prehending that Men would rather part with too much of a little, than to let their work lie still, that must bring them in all they have; but these Commissioners lasted not long, though the work did: The Justices of Peace are looked upon as meet for that service, and it's a vain thing to multiply Com-<sup>42 E. 3. c. 6.</sup> missions, where the work may be done by one, that before this time had obtained an additional Cognisance of all Causes of Riots, Batteries, wandring dangerous persons, and offences in Weights and Measures, and in Purveyance. To them, I say,<sup>54 E. 3. c. 5, 6.</sup> all this work concerning Labourers, is also committed by the Parliament; and herewith a way was laid open for Crimes of greatest regard under Felony, to be determined by Trial in the Countrey, according to the course of Common Law. The issue of all which was not only ease to the people, but a great escape from the rigour of the Council-Table in the Star-Chamber, and the King's-Bench at *Westminster*, on the one side, and also from the gripe of the Clergy on the other; who hitherto held the Cognisance of the Markets in Weights and Measures to themselves. This model so pleased all men, that *Richard* the Second, that was pleased with nothing but his own pleasure, gave unto the Justices of Peace yet further power to execute the Statute at *Northampton*, against riotous ridings,<sup>14 Rich. 2. c. 12.</sup> and to settle the wages of Labourers and Servants, to punish unlawful Huntings by the meaner sort of people, and regrators of Wool, false Weights in the Staple, unlawful wearing of Liveries, and unlawful fishings, contrary to the Statute at *West-*<sup>13 Rich. 2. c. 8. cap. 13.</sup> *minster*, 2. Thus was the power of Justices of the Peace grown<sup>14 Rich. 2. c. 4:</sup> to that heighth in these and other things, that it undermined,<sup>16 Rich. 2. c. 4.</sup> not only the Council-Table and King's-Bench, but the Com-<sup>17 Rich. 2. c. 9.</sup> missions of Gaol-delivery, and of *Oyer* and *Terminer*, so far forth as their work was, much less than formerly, for Neighbours in cases of Crime, are better trusted, with the lives and estates of men, than strangers, so as in all this the people are still the gainers.

The manner of Judicature by these Justices of the Peace still remains: nothing appears by any Statute in these times, that one

15 Rich. 2. c. 2. one Justice of the Peace might do alone, but record a forcible detainer, although questionless in point of present security of the peace and good behaviour by the intent of the Statutes, he might do many things, but in Case of *Oyer and Terminer*, all must be done in publick Sessions, which the Justices of the Peace had power to hold by Commission only, until the thirty sixth year of *Edward* the Third, and ever after that they held their Sessions, by vertue of the Statutes, and had power to determine divers things in their Sessions, according to discretion. These were remedies after the Fact, now see what preventing Physick these times afforded.

34 E. 3. c. 1.

16 R. 2. c. 4.

One thing that much irritated the spirits of men into discontent, was false news, or slanderous reports, raised and spread amongst the great men: For in these times the Lords were of such a considerable power as the vexation of one Lord, proved the vexation of a multitude of the meaner sort; and though the Statute of *Westminster* the 1. formerly had provided against such Tales, yet it touched only such as concerned discord between the King and people, although by implication also it might be construed to extend further. But *Richard* the Second, willing to live in quiet, that he might enjoy his pleasure, would have the people know their duties in plain words, and agreed to a Law, that all such as published such false news, tending to sow strife between the great Men, should be imprisoned until the first mover was found, and if he were not found, then the Relator should be punished by advice of the Council: So much power was then given to the Council, what ever it was.

2 R. 2. c. 6.

12 R. 2. c. 11.

Thus the seed was choked, or was so intended to be, though every passion was not thus suppressed: For some angers conquer all fear, and will hold possession, come what will. In the next place therefore, provision is made against the first Actings in sorting of parties, by tokens and liveries; utterly inhibiting the meaner sort of the people, from giving of Liveries to maintain quarrels, upon pain of Fine and Imprisonment, and the Trial to be before the Justices of Assize, which it seems was in affirmance of former Laws, as by the preamble of the Statute

1 R. 2. c. 7.

tute doth appear, though the Laws themselves are not extant. About fifteen years after, it was by sad experience found, that the Lords maintained quarrels by multitude of Liveries, and therefore another Law was made inhibiting the Lords to give Liveries to any, but their menial Servants; and it's ordered, that the Justices of the Peace, shall make enquiry of such offences, and punish them according to their discretion.

16 R. 2. cap. 4.

A third prevention was provided against gathering together of parties, after they are sorted. For the humours may so abound, as nothing will keep them in; they must either break out into a fore, or a long sickness of State will certainly follow. To this end therefore, the Statute made at *Northampton*, is again revived, expressly forbidding all persons to ride Armed, unless in some particular Cases of executing Justice, or guarding the person of the King, or his Justices, and such like: And if men will be so adventurous; as to out-dare Law, by publick force, Troopings together, and riotous Ridings: Another course is taken, not by Commission of the Peace, but rather of War, directed unto valiant persons in every County, and they have power thereby to apprehend such Offenders, and imprison them until the Gaol-delivery, though no Indictment be found thereof, until the Gaol-delivery shall be. By this Commission therefore power is given of *Posse Comitatus*, in nature of a Commission of Array, with an Additional power of fighting and destroying, so as though the King granteth the Power by the Commission, yet the Parliament giveth the power to the Commission; and be it a Commission for Peace or War, it is Originally from that power.

2 E. 3. c. 3.

7 R. 3. c. 13.

20 R. 2. c. 1.

The fourth and last prevention, was the taking away means of continuance and supporting such Riotous ways, *Viz. Castles and Gaols out of the Custody of private hands, and restoring them to their Counties*: For Gaols and Castles are taken promiscuously for places of security, in times of peace to keep ill persons from going out, and in times of War, from getting in: Amongst these, some belonged to the King, and were committed to such as he favoured, who commonly (in such times of Oppression and Violence) grew too big

13 R. 2. c. 15.

for Justice, usurping a Gaol-delivery, and making such places of strength many times, even to the innocent, a Prison to keep them from the Law, but unto guilty persons an *Asylum* to defend them against the Law. And these thus belonging to the King, were under no Law, but of Prerogative, whereas other Castles of private persons were under the yoke of the Statute, 13 E. 1. For remedy of all which, the King's Castles are once more returned to the Sheriff's Custody, by Act of Parliament; who questionless hath the power to dispose of all places of strength, whether in order to Peace, or War, and could not dispose them into a more safe, and indifferent hand, than the Sheriff's; who is as well the King's Officer, as the Kingdoms Servant, and much intrusted by the Law in the execution of its own power. And thus is this Nation now prepared for a settled peace, a Condition that is long in ripening, and soon rotten, unless it be well fenced, and over-awed by a good Conscience: But *Richard* the Second, was neither so good, nor so happy; his Heart affected to be high, but his Head could not bear it; he turns giddy, and runs far wide: Those that would reduce him, he enforces into Foreign Countreys; and himself holds on his carere over hedge and ditch into *Ireland*, where under pretension of holding possession of that Kingdom, he lost *England*, and whilst he plays his game in that Countrey, another plays King, by your leave, in this, and steps into the Throne; teaching the King thereby this Lesson, though too late; *That Non-residency is dangerous for a Priest, but unto a Prince fatal, unless his Subjects be fast to him, when he is loose to them.*



## CHAP. XIII.

*A View of the Summary Courses of Henry the Fourth, Henry the Fifth, and Henry the Sixth, in their several Reigns.*

**H**E that played this prank was the banished Duke of *Hertford*, Son of *John of Gaunt*, and by his Death, now become Duke of *Lancaster* by Title, and as the times then were, it proved not hard to get more: For in uncertain Common-Wealths, it is an easie thing for a man of opinion, that hath less than his due, to get more than he ought. As Son of *John of Gaunt*, this Duke had the peoples good wishes; he (a wife and a brave Man, and under oppression) gained the more upon the people, by how much they love brave men, and compassionate such as suffer wrong, especially from such persons, from whom they all found the like measure. All these concurring with the King's absence, invited the Duke to adventure himself upon the influence of the peoples favour, to gain his own right, and what more the people would allow him; and if no more, yet his Honour is saved, he came for his own, and attained his end..

Thus then he comes over, without Army, or Foreign power, or other help, saving the advice and interest of Archbishop *Arundel*, who was his Companion in suffering, Partner in the Cause, and no less welcome to the Clergy, than the Duke himself was to the people; and so gained power to the Duke, though he brought none. Upon their Arrival the aspects of all are benign; the Dukedom waits for him,

and in that, as in a mirrour he beholds the way fair and easie; yet further, it pities him to see the Kingdom so torn in pieces and spoiled: The people knew him able, and hoped him willing to amend all; they offered him their service, which he accepts, and therewith the Crown: so hard a thing it is for to put a stop to a Conquerour in his carere.

By this time was the Duke of *Herford* thus become Duke of *Lancaster*, and King of *England*, under the name of *Henry* the Fourth, by a design, that in the proof, was more easie than commendable: and which being effected cost more skill to make that seem fair, which was so foul, than to accomplish the thing. He therefore first heaps together Titles, enough to have buried the clamour of Usurpation, if it would have succeeded. Conquest was a Title free from dispute, whilst power holds; but it looks better from a Forraign Enemy, than one sworn to the English Crown; and therefore after that had served his turn, he disclaimed it, as that which was, though meet enough to have, yet unmeet to hold.

His right by Designation from his Predecessor, he glanced upon, but durst not adventure it too deep into the peoples consideration, whose Ancestors had formerly over-ruled the Case against King *John*. He then stayed upon a concealed Title, from a concealed Son of *Henry* the Third, of whom they who listed might be perswaded; but few believed the thing, nor did himself, but thence takes his flight up to a *Jus Divinum*, or some hidden Fate that called him to the work; but even there his wings failed him, and so he falls flat upon the peoples Election, *De bene esse*. Some of these, or all together might make Title enough for a great Man that resolved to hold by hook, what he had got by crook; and therefore trussing them up all together, he enters his claim to the Crown, *As coming from the Blood Royal from King Henry, and through the Right that God his Grace hath sent me; with the help of my Kin, and Friends, to recover the same, which was in point to be undone, for want of good Governace, and due Justice:* The extract of all, is, that he was chosen

by



by the people and Parliament then sitting: And albeit that by the Relinquation of *Richard* the Second, the Parliament might seem, in strict construction of Law, to be expired, together with the King's power who called them together, yet did not that Parliament so apprehend the matter, but proceeded not only to definitive Sentence of Deposing him, but declared themselves by their Commissaries, to be the three States, and Representative of the people of *England*, maintaining thereby their subsistency by the Consistence of the Members together, although their Chief was for the present like a head in a trance, till they had chosen *Henry* the Fourth to succeed in the Throne, by this means preventing the conceit of discontinuance in the very Bud of the Notion.

Much like his entry was his continuance, a continual tide of Foreign and Domestick War and Conspiracy, enough to exercise his great Courage, although he was more Wise than Warlike, being loth to take up Arms; (for well he knew, that a sick Title never sleeps but in a Bed of Peace) and more loth to lay them down; for besides Victory, whereby he gained upon his Enemies in time of War, he knew how to make advantage of them in time of Peace, to secure his Friends, to keep others in awe, to enforce such Laws as stood with reason of State, and the present posture of Affairs, and where Laws failed, to fill up the period with Dictates of his own Will. And upon this Account the Product was a Government full of Ulcers, of Blood-shed, without regard of Persons, whether of the Lay, or Religious Order, without Legal Trial, or privilege of Clerk. So was Arch-Bishop *Walden* Dethroned, Arch-Bishop *Scoop* put to death, and Dukes were dismounted without Conviction, or Imputation, saving of the King's displeasure: Taxes multiplied, although begotten they were upon the Parliament, like some monstrous Births shewn to the World, to let it know what could be done; but concealed by Historians, to let it know what may not be done. Yea, the privileges of Parliament invaded in point of Election: A thing that none

none of his Predecessors ever exemplified to him, nor none of his Successors ever Imitated him in; nor had he purposed it, but that he was loth the people should know more of the Government then needs must.

To keep off Foreign troubles, he made Peace with *France* for longer time than he lived; yet was ever infested with the Sword of *Saint Paul* in behalf of *Richard* the Second's Queen, and with the Factions between the Houses of *Orleance* and *Burgundy*, in which he had interested himself to preserve the Foreign Neighbour-hood in Parties one against another, that himself might attend his own security at home. He would have moved the Scots, but they were already under English Banners; nor could he reach so far, having so many enemies even in his own bosom. The Welsh were big with Antiquity, and Mountains of Defence; they begin to bethink themselves of their Ancient Principality, hold the King's Arms at hard Duty, till by Laws Enacted in Parliament, they lost their Liberties of bearing Office Ministerial, or of Judicature, of holding Castle, of Convention without the King's License, yea, of Purchase; and by degrees were brought down from the height of a Free Principality to be starved in their power, and inferiour to a Free people. And thus the Welsh on the one side, the discontented Lords on the other, and *Mortimar's* Title in all, so busied the King, as though he lopped off the Tops as they sprang up, yet they sprang forth as they were lopped; nor was it the King's lot all this while to find out the root of All, or to strike at that.

Lastly, when time had made all troublers weary, yet he still sits upon Thorns; he was jealous of his Subjects, jealous of his Son, yea jealous of himself. It being ever the first and last of his thoughts, how to keep his Crown. For the most part of his Reign, he was troubled with the walking Ghost of *Richard* the Second; ever and anon he was alive, he was here, he was there, and so the peoples minds were always kept at random; but when all these  
 Spirits

Spirits are conjured down, *Richard* the Second's Ghost is yet within *Henry's* own breast. So ruled *Henry* the Fourth, an unhappy confident man, that durst undertake more than he would, did more than he ought, was successful in what he did, yet never attained his end; to be sure of his Crown, and quiet of mind. For a plaister to this sore, he turned somewhat towards Religion; but shewed it more in Zeal to Church-men, than in works of Piety; and therefore may be thought to regard them, rather as his best Friends in right of Arch-Bishop *Arundel*, than as in relation to Religion; yet as if he overlooked that, he desires their prayers, becomes a strict observer of superstitious rites, is fiery Zealous against the Lollards, intends a journey into the Holy Land, and War against the Infidels, (the common Physick of guilty Kings in those days.) Briefly, he did will to do any thing but undo what he had done; and had done more, had his journey to the Holy Land succeeded; but (whether hastned or delayed, by a Prophecy of the ending of his days, falls not within my Pen to censure:) entring upon the work he died; in the beginning of his purposes, in the midst of his fears, never came to the Holy Land, and yet yielded up his last breath in *Jerusalem*.

*Hist. Eccles.  
Ang. 618.*

THE Parliament was then sitting, and was witness of the death of *Henry* the Fourth, as it had been of his entrance upon the Throne, as if purposed to see the course of the Crown, in the doubtful currant between the two Houses of *Lancaster* and *York*, and to maintain their own honour in directing the Scepter according to their warranty upon a late Intail by Act of Parliament; yet did not all rest upon this; for the Heir of *Henry* the Fourth was a Man every inch of him, and meant not to Moot upon the point: His Father died a King, and he his Heir, had the Crown, and was resolved to hold it: A rough young Man he had been formerly, and bold enough to out-face small doubts in point of succession, for he could (for a need) out-face common.

*Henry the  
Fifth.*

common civility it self. This might have lien in his way, for he that cannot govern himself, can much less govern a Kingdom: Yet a hidden providence concluded quite contrary, and rendred him a clear Testimony of a strange change by the anointing Oyl, like that of *Saul* that forthwith had the Spirit of another Man: So though not hampered thereto by affliction, as was *Edward* the First; yet was he his parallel in Government and superiour in success. Being seated in the Throne, all Men thought it dangerous to abide the adventure of the Turn of this King's Spirit. The Clergy had but yesterday tryed the Mastery with the Laity, and gained it but by one Vote; there was no dealing with the Clergy, whilst Arch-Bishop *Arundel* lived, nor with him whilst *Henry* the Fourth lived, or his merits were in memory; but now they both are dead, the Clergy and the Laity are upon even ground; this might make the Clergy now not over confident: The Lords looked on the King as a Man like enough to strike him that stands next: The wise Men saw he would be doing; all Men were tired with intestine quarrels; and jumped in one, that he that would be in action should act abroad, where he might get renown, and a purchase big enough for his Spirit. *Scotland* was a Kingdom yet incompetent to the King's Appetite. *France* was the fairer mark and better game, and though too big for the English gripe, yet the Eagle stooped, and sped himself so well, as within six years he fastned upon the Sword and Scepter, and a Daughter of *France*, and might have seised the Crown; but chose to suffer a blurr to lye upon his Title derived from *Edward* the Third, rather than to incurr the censure of Arrogancy over a stooping Enemy; or to pluck the fruit from the Tree before it was fully ripe; which in time would fall into his Lap, by a better Law than that of the Sword; otherwise it might be well conceited, that he that hath both Right and Power, and will not seise, disclaims. Besides the King was as well Inheritor to his Father's Fate as Crown: still he had success, but the end was so far distant, that he died in the way thereto. The brave *Tauphiné* of *France* maintaining War (after his Father,

th:

the French King had yielded up the Bucklers to *Henry* the Fifth) till *Henry* the Fifth died, and the English did forego what they had formerly gotten in *France*, by the Sword of that great Commander. Nor did the English gain any thing in the conclusion of this War, but an honourable windy reputation, of being one of the five Chief Nations of Christendom; (if honour it be to be reputed amongst the Nations) a Conqueror of *France*; the chief Leader unto the dethroning of three Popes at once, the Election of Pope *Martin*, and of giving a cure to that deadly wound of the Popedom, which had spent the blood of two hundred thousand Mens lives lost in that quarrel.

These Foreign Engagements made the King less solicitous of the point of Prerogative at home; and the rather, because he knew the way to conquer his private Enemies arms, and his Subjects hearts; without loss of honour in the one, or reverence in the other. He loved Justice above the rank of his Predecessors, and in some respects above himself; for he advanced *Gascoign* for doing Justice, though to the King's own shame. He liked not to intrude himself into Elections, and therefore though requested by the Monks of *Canterbury*, he would not nominate a Successor to Arch-Bishop *Arundel*, but left the whole work to them. In the Authority of his place, he was moderate, and where his Predecessors did matters without the Lords consent, when he made his Uncle the Marquis of *Dorset*, Duke of *Exeter*, and had given him a pension to maintain that honour, he asked the Lords consent there-  
to. To the Clergy he was more than just, if not indulgent, led thereto by his Father's example, as being wrapped up in the same Interest as I conceive, rather than out of any liking of their ways, now growing more bold upon usurpation than in former times. Or it may be that having prevailed in that work in *France*, which to any rational Man must needs appear above the power of the King, and all the Realm of *England*; he looked upon it as more than humane, and himself as an instrument of Miracles; and was stirred up in his zeal to God, according to his understanding in those

*Antiq. Brit.*

*Walsing.*

*Antiq. Brit.*  
285.

those dark times, to give the Clergy scope, and to pleasure them with their liberty of the Canon-Law, that began now to thunder with fire and terrour, in such manner, that neither greatness nor multitude could withstand the dint, as was evidenced, in that penance inflicted upon the Lord *Strange*, and his Lady in case of Blood-shed in Holy Ground, and their hot pursuit of the Lord *Cobham*, unto a death of a new Nature, for somewhat done, which was sometimes called Treason, and sometimes Heresie: And thus became *Henry* the Fifth baptized in the flames of the *Lollards*, as his Father had sadly rendred up his spirit in the same. I say, in this he is to be looked upon, as one mislaid for want of light, rather than in opposition against the light: For in his last Will, wherein Men are wont to be more serious and sincere amongst his private regards, he forgets not to reflect upon Religion to this purpose: *We further bequeath (saith he) to the redundant Mercy of the Most Excellent Saviour, the Faith, Hope, and Charity, the Vertue, Prosperity, and Peace, of the Kings our Successors, and of our Kingdom of England; that God for his Goodness sake would Protect, Visit, and Defend them from Divisions, Dissensions, and from all manner of Deceitfulness of Hereticks.* And thus Piety, Justice, and Moderation of *Henry* the Fifth, Adorned and Crowned the honour of his Courage and Greatness, with that honourable Title of *Prince of Priests*: and had he been blessed with a clearer light, he might as well under God have obtained the Title of *Prince of Princes*, wanting nothing that might have rendred him a precedent of Fame.

But

**B**ut the time is now come, that the Tide of *England's Henry the*  
Glory must turn, and the sudden Conquest in *France*, by *Sixth*.  
*Henry the Fifth*, not unlike the Macedonian Monarchy, must  
disgorge it self of what it had hastily devoured, but never  
could digest. Three things concurred herunto, one dan-  
gerous, the other two fatal to the flourishing condition of any  
Nation.

First, The King is a Minor in the least degree that ever any  
Prince sat on English Throne: He entred thereinto, neither  
knowing what he did, nor where he was; and some say, he  
sat therein in his Mothers Lap: for his Life had been more  
in the Womb, than abroad. A sad presage of what followed,  
for many Men think that he was in a Lap all his days. Nor  
are the chief men to be blamed herein, for it's a certain Truth,  
that it's much better that Election of a King should be ground-  
ed upon a rule that is known, though it be by descent of Inhe-  
ritance, than upon none at all. For if a Child should suc-  
ceed, or a Lunatick, yet where the Principle of Government  
resteth upon the Representative of the People, there is the  
less cause of Complaint, the Government being still the  
same, both for Strength, Wisdom, and Uniformity: though it  
may be the Nation not so Active and brave. For a Common-  
Wealth can admit of no Minority, though a Monarchy by de-  
scent may.

Secondly, This deficiency in Nature might have been sup-  
plied, but that these times were unhappy in the great power  
of the Lords: to please whom, the Government is parcelled  
out into two shares: One is made Protector of the King's  
Person, the other Protector of the Kingdom: too many by  
one: For let their Persons be never so eminent for Abilities,  
if they be not as eminent for Humility, and self-Command,  
their hearts will soon over-rule their heads into a Faction:  
And therefore though the Earl of *Warwick* was a wise Man,  
and the Duke of *Glocester* a wise Man, yet the Earl of *War-*  
*wick* with the Duke of *Glocester* were not wise. On the other  
side, the Protectorship of the King's Person, being in the

Duke of *Exeter*, and that of the Realm in the Duke of *Glocester*; things succeeded passing well, for they both had one publick aim, and the Duke of *Exeter* could comply with the Spirit of the Duke of *Glocester*, who otherwise was not so pliant: But after five years, the Duke of *Exeter* dying, and the Government of the King's Person devolving to the Earl of *Warwick*, who sided with the proud Cardinal of *Winchester*, against the Duke of *Glocester*, and so not only consumed the rest of the King's Nonage in a restless disturbance of Affairs, but also despoyled *Henry* the Sixth, of the Spirit of a King for the future, and so the Kingdom of a King: For it was not the condition of *Henry* the Sixth, to be endowed with a Spirit of such height, but might well have been led by advice, and needed not the Earl of *Warwick's* rugged brow to overlook him; who was not content to have the King only attendant upon his advice: but must likewise have him under his Rod, to be corrected for his faults, and that by a Commission under the King's own hand and Seal, dated in the eleventh year of the King's Reign, and sounder Colour of Curbing, he killed that spirit in the King, which otherwise, doubtless, had both spirit and pride enough to act himself above his due height, and could not have been so long a Child, and so little a Man as he was.

It is very true, that *Henry* the Fifth by Will, seemed to countenance his Brothers, and it cannot be denied but the Duke of *Glocester*, was of such noble parts, that they could hardly dilate in any work inferiour to the Government of a Kingdom. Nevertheless, to yield much to the will of a diseased King in such Cases, is as ill a precedent, as the making of a King by Adoption: and it had been better for the people to have adhered to the Duke of *Glocester* alone, than by joyning him with another, bring into a precedent such a luxuriant Complement of State, as a Protectorship of a Kingdom, which is of such little use to a Common-wealth, and of so bitter Fruit to the Party, as must needs bring repentance when it is too late: *For he that can manage the Protectorship of a Realm, without*



*without anger of good Men, or envy of bad Men, is fitting to live only with Angels, and too good for the World.* Nor did the Duke of *Glocester* meet with better measure, how wise soever he was, and truly devoted to the good of the Realm: For after four and twenty years Government, so wisely and faithfully carried on by him, that Justice it self could not touch his Person; injustice did, and he received this reward from his Nephew *Henry* the Sixth, that he died in the dark, because the cause durst not endure the light.

Now is *Henry* the Sixth<sup>s</sup> perswaded that he is of full Age, he had laid aside his Guardian, the Duke of *Glocester*; but forgetting to sue out his Livery, he betakes himself from the Grace of God, into the warm Sun, (as the Proverb is) changing the advice of a faithful experienced wise Counsellour, for the Government of an Imperious Woman, his Queen, who allowed him no more of a King, than the very Name; and that also she abused to outface the World: and after she had removed the Duke of *Glocester* out of the way, undertook the sway of the Kingdom in her own Person, being a Foraigner, neither knowing, nor caring for other Law, than the Will of a Woman.

Thus the glory of the House of *Lancaster* goes down, and now a Star of the House of *York* appears in the rising, and the people look to it. The Queen hereat becomes a Souldier, and begins the Civil Wars between the two Houses, wherein (her English party growing wise and weary) she prays aid of *Ireland*, a Nation that like unto Crows, ever wait to prey upon the infirmities of *England*. The Wars continue about sixteen years by fits, wherein the first loss fell to the English party, the pretensions being yet only for good Government: Then the Field is quiet for about four years, after which the clamour of ill Government revives, and together therewith a claim to the Crown by the House of *York* is avouched; thereupon the Wars grew hot for about four years more, and then an ebb of as long quiet ensues. The Tide at last returns, and in two

Comin. lib. 1.  
cap. 7.

two years War, ends the quarrel, with the death of fourscore Princes of the Blood Royal, and of this good Man, but unhappy King. Unhappy King, I say, that to purchase his Kingdoms Freedom from a Foreign War, sold himself to a Woman; and yet lost his bargain, and left it to Oblervation; *That a Conscientious Man, that marries for by-regards, never thrives*: For France espied their advantage, they had maintained War with England, from the death of Henry the Fifth, with various success: The Duke of Bedford being Regent for the English, for the space of fourteen years mightily sustained the fainting condition of the English affairs in those parts, and having Crowned his Master Henry the Sixth in Paris, in the ninth year died, leaving behind him an Honourable Witness, even from his enemies, *That he was a brave Commander, a true Patriot, and a Faithful Servant to his Lord and Brother Henry the Fifth, and to his Son Henry the Sixth*. But now the Duke of Bedford is dead; and though France had concluded a Peace with the English, yet they could not forget the smart of their Rod; but concluded their Peace upon a Marriage, to be had with a Woman of their own blood and interest: and what they could not effect by Arms in their own Field, they did upon English ground by a Feminine Spirit, which they sent over into England to be their Queen, and in one Civil War (shedding more English blood by the English Sword, than they could formerly do by all the Men of France) were revenged upon England to the full, at the English mens own charge: For what the English gain by the Sword, is commonly lost by discourse. A Kingdom is never more befooled, than in the Marriage of their King; if the Lady be great, she is good enough, though as *Jezabel* she will not either reverence her Husband, obey her Lord and King, nor regard his People. And thus was this Kingdom scourged by a Marriage, for the sin of the wise Men, that (building upon a false Foundation) advised the King in the breach of Contract with the Earl of *Arminiack's* Daughter. And thus the King also for that hearkning to such Council, he murdered the Duke of *Glocester*, (that had been to him a Father) yielded up

Comin. lib. 3.  
cap. 8.

up his Power to his Queen, (A Masterless and Proud Woman, that made him like a broken Idol without use) suffered a Recovery of his Crown and Scepter in the Parliament from his own Issue, to the Line of York; then renewing the War (at his Queens beck) lost what he had left of his Kingdom, Countrey, and Liberty, and (like the King that forgot the kindness of *Jebojada*) lost his Life by the hand of his Servant.

## CHAP. XIV.

*Of the Parliament, during the Reigns of these Kings.*

THE interest of the Parliament of *England*, is never more Predominant, than when Kings want Title or Age: The first of these was the Case of *Henry* the Fourth immediately; but of them all in relation to the pretended Law of the Crown: but *Henry* the Sixth, had the disadvantage of both, whereof in its due place.

The pretended Law of the Crown of *England*, is to hold by Inheritance, with power to dispose of the same, in such manner, by such means, and unto such persons, as the King shall please. To this it cannot be denied, divers Kings had put in their claims, by devising their Crown in their last Will; but the success must be attributed to some Power under God, that must be the Executor when all is done, and which must in Cases of Debate concerning Succession, determine the matter by a Law, best known to the Judge himself.

Not much unlike hereunto, is the Case of *Henry* the Fourth, who like a Bud, putting up in the place of a fading Leaf, dismounts his Predecessor: First, from the peoples regard

regard, and after from his Throne, which being empty, some times he pretended the resignation of his Predecessor to him; other whiles an obscure Title by descent, (his Conscience telling him all the while that it was the Sword that wrought the work.) But when he comes to plead his Title to Foreign Princes by protestation, laying aside the mention of them all; he justifies upon the unanimous consent of the Parliament, and the people in his own only Person: And so before all the World, confessed the Authority and power of the Parliament of *England*, in disposing of the Crown in special Cases, as a sufficient bar unto any pretended right that might arise from the House of *Mortimar*. And yet because he never walks safely that hath an Enemy pursuing him still within reach, he bethinks himself not sure enough, unless his next Successors follow the dance upon the same foot; to this end an Act of Parliament leads the Tune, whereby the Crown is granted or confirmed to *Henry* the Fourth for life, and entailed upon his Sons, *Thomas*, *John*, and *Humphrey*, by a Petition presented, 5 Hen. 4.

7 H. 4. cap. 2.  
8 H. 4. n. 38.

Thus *Henry* the Fourth, to save his own stake, brought his Posterity into the like capacity with himself, that they must be Kings, or not subsist in the World, if the House of *York* prevails; and so he becomes secured against the House of *York*, treading on his heels, unless the Parliament of *England* shall eat their own word: However for the present, the House of *LANCASTER* hath the Crown entailed, and the Inheritance is left in the Clouds to be revealed in due time. For though this was the first precedent of this kind, yet was it not the last, wherein the Parliament exercised a Power by Grant or Confirmation, to direct the Law and Course of the Crown as they pleased.

39 H. 6. n. 18.

The due consideration hereof, will make the things that follow, less strange: For the Parliament according to occasion, as the Supreme power of this Kingdom, exercised Supreme Jurisdiction in order to the safety of the Kingdom, as if no King had been to be found, in issuing forth Writs under the Great Seal; concluding of matters without the Royal Assent: treating

1 H. 6. n. 12, 13.

treating of Peace with Foreign Nations, and of other matters, and determining their Resolves before discovery made to the King of their Councils; making Ordinances, and rulling by them, 3 H. 6. n. 29. 2 H. 6. n. 27. 8 H. 6. n. 12. referring matters determinable in Parliament, to be determined according to their directions, *Authoritate Parlamenti*: Confirming Peace made by the King, protesting against Peace, made without or against their consent: making Ambassadors with power to engage for the Kingdom: making Generals of the Army, Admirals at Sea, Chancellors, Barons, and Privy Counsellors, and giving them instructions, 8 H. 4. n. 73. and 76. and 31. 5 H. 4. n. 57. 31 H. 6. n. 21. and binding them to observance upon Oath, 11 H. 4. n. 19. 39. Ordering the person of the King, denying his power of Judicature in Parliament, and ordering his Household and Revenue; besides many other particulars.

Now if such as these things were thus done, not by one Parliament, which possibly might be overswayed by Factions, but by the course of a *Series* of Parliaments, that mightily laboured against Faction, and unworthy ends and aims, that man who shall determine the same to be unjust or indiscreet, should himself first be determined to be very just, and exceeding wise. Nor was the Parliament partial in all this, but being in a way of Reformation, it set upon the work of reforming it self.

Some that are very zealous in the point of Arbitrary and absolute Government of Kings in this Nation, and in all other, amongst other grounds rest upon this one, That an English King hath power to call Parliaments, and dissolve them; to make and unmake Members as he shall please. I do easily grant that Kings have many Occasions and Opportunities to beguile their people, yet can they do nothing as Kings, but what of right they ought to do: They may call Parliaments, but neither as often or seldom as they please, if the Statute-Laws of this Realm might take place: Nor if they could, is that power necessarily, and absolutely arising from Supremacy; seeing it is well known that such power is, entrusted

by the Superiour States in other Nations, to the Inferiour, who daily attend on publick Affairs, and therefore can discern when the general Conventions are most necessary. As touching the dissolving of Parliaments against the wills of the Houses, it's true that sad precedents have been of later times in that kind; and so for want of due attendance, Parliaments have been enforced to adjourn, to prevent a worse inconvenience; but these are infirmities better buried in silence, than produced as Arguments of power, seeing it's evident that Kings themselves were no greater gainers thereby, than an Angry Man is by his passions. It is true also that Kings may make Lords, and Corporations, that may send their Burgeses to the Parliament, and thus the King may make as many as he will (as the Pope did with the Bishops in the Council of *Trent*) yet cannot he unmake them when he pleases, nor take the Members from the Parliament, without attainder and forfeiture, according to the known Law: Neither can all these Instances prove, that the Kings of *England* have the sole and Supreme power over the Parliament: Nor did the Parliament in these times allow of any such Authority, and therefore proceeded for the reforming of themselves, by themselves, in many particulars as the Statutes do hold forth.

7 H. 4. c. 15. And First in the point of Elections, (for an error in that, is like an error in the first Concoction, that spoils the whole Nutriment,) they ordained that the Election of Knights shall be at the next County-Court, after the Writ delivered to the Sheriff.

23 H. 6. c. 15.

*That in full Court between the hours of eight and nine in the morning, Proclamation shall be made of the day and place of the Parliament. That the Suters duly summoned, and others there Present, shall then proceed to the Election; notwithstanding any Prayer or Commandement to the contrary. That the names of the Persons elected, (whether present or absent they be) shall be returned by Indenture, between the Sheriff and the Elizars; and that a Clause to that end shall be added to the Writ of Summons.*

This

This was enough to make the Sheriff understand, but not to obey, till a penalty of one hundred pound is by other Laws imposed upon him, and a years imprisonment without Bail, or Mainprife, besides damages for false return in such Cases: and the party so unduly returned, Fined, and deprived of all the wages for his service. Thus the manner of Election is reduced; but the Persons are more considerable: For hitherto any Man of English blood promiscuously had right to give or receive a Vote, although his Residency were over the wide World.

But the Parliament in the time of Henry the Fifth, reduced these also, (whether they were such as did chuse, or were chosen) unto their proper Counties, or else rendred them incapable to Vote or serve for any County. And the like Order was made for the Burroughs, *That no Person must serve for any City or Burrough, nor give Vote in Eleſting ſuch as ſhall ſerve for that Town, unleſs they be both Free, and Reſiants within that City or Burrough:* A Law no leſs whoſome than ſeaſonable. For the times of Henry the Fourth, had taught Men to know by experience, That a King that hath Souldiers ſcattered over the Kingdom, can eaſily ſway the County courts, and make Parliaments for their own Tooth. Yet this was not enough, For all Elizors, though of the meanest sort, yet are still able to do as much hurt with their Vote, as those of the best sort both for wisdom and publick mind, can do good by theirs. This made Elections much subject to parties, and confusions, and rendred the Parliament much less considerable.

A remedy hereunto is provided, in the minority of Henry the Sixth, *Viz. That no Man ſhould give his Vote in Eleſtions in the County, unleſs he hath forty ſhillings yearly in Free Lands or Tenements, and this is to be teſtified upon Oath of the Party.* And more plainly it is ordered (within two years after) that each Elizor shall have Frank Tenement of that value within the same County. And thus the Free-men yielded up their liberty of Election to the Free-holders, possibly not knowing what they did; Nevertheless, the Parliament well knew what they did, this change was no less good than great.

For first, These times were no times for any great measure of Civility: The Preface of the Statute shows, that the meanest held himself as good a Man, as the greatest in the Countrey, and this tended to parties, tumults, and bloodshed.

Secondly, where the multitude prevail, the meaner sort are upon the upper hand; and these (generally ignorant) cannot judge of Persons, nor Times, but being for the most part led by Faction or Affection, rather than by right Understanding, make their Elections, and thereby the general Council of this Nation, less generous and noble.

Thirdly, There is no less equity in the change, than policy: for what can be more reasonable, then that those Men only, should have their Votes in Election of the Common Council of the Kingdom, whose Estates are chargeable with the publick Taxes and Assessments, and with the Wages of those persons that are chosen for the publick Service: But above all the rest, this advancing of the Free-holders in this manner of Election was beneficial to the Free-men of *England*; although perchance they considered not thereof; and this will more clearly appear in the consideration of these three particulars.

First, It abated the power of the Lords, and great Men, who held the inferiour sort at their Devotion, and much of what they had by their Vote.

Secondly, It rendered the body of the people more brave; for the advancing of the Free-holder, above the Free-man, raiseth the spirit of the meaner sort to publick regards, and (under a kind of Ambition) to aspire unto the degree of a Free-holder, that they may be somewhat in the Commonwealth, and thus leaving the meanest rank sifted to the very bran, they become less considerable, and more subject to Coercive power, whilst in the mean time the Free-holder now advanced unto the degree of a Yeoman, becomes no less careful to maintain correspondency with the Laws, than he was industrious in the attaining of his degree.

Thirdly, By this means now the Law makes a separation of the inferiour Clergy, and Cloistered people, from this service, wherein



wherein they might serve particular ends much, but *Rome* much more. For nothing appeareth, but that these dead persons in Law, were nevertheless, Free-men in Fact, and lost not the liberty of their Birth-right, by entering into Religion, to become thereby either Bond, or no Free-Members of the people of *England*.

Lastly, As a binding plaister above the rest; First, a Negative Law is made, that the persons elected in the County, must not be of the degree of a Yeoman, but of the most noted Knights, Esquires, or Gentlemen of the Countrey; which tacitely implies that it was too common to advance those of the meaner sort; whether by reason of the former wasting times, Knights and Esquires were grown scant in number, or (by reason of their rudeness) in account: Or it may be the Yeomanry grew now to feel their strength, and meant not to be further underlings to the great Men, than they are to their Feathers, to wear them no longer than they will make them brave. Secondly, the person thus agreed upon, his entertainment must be accordingly, and therefore the manner of taxing in full County, and levying the rate of Wages for their maintenance, is reformed and settled. And Lastly, Their persons are put under the protection of the Law in an especial manner, for as their work is full of reflexion, so formerly they had met with many sad influences for their labour. And therefore a penal Law is made, against force to be made upon the persons of those Workmen of State, either in their going to that Service, or attending thereupon, making such Delinquents liable to Fine and Imprisonment, and double damages. And thus however the times were full of confusions, yet a foundation was laid of a more uniform Government in future times, than *England* hitherto had seen.

## CHAP. XV.

## Of the Custos, or, Protector Regni.

**K**ings, though they have vast dimensions, yet are not infinite, nor greater than the bounds of one Kingdom, wherein, if present, they are in all places present; if otherwise, they are like the Sun gone down; and must rule by reflexion, as the Moon in the night: In a mixt Commonwealth, they are integral Members, and therefore regularly must act, *Per deputatum*, when their persons are absent in another Legialty, and cannot act, *Per se*: Partly because their Lustre is somewhat eclipsed by another Horizon; and partly by common intendment they cannot take notice of things done in their absence. It hath therefore been the ancient course of Kings of this Nation, to constitute Vice-gerents in their absence, giving them several Titles, and several powers, according as the necessity of affairs required: Sometimes they are called Lord Warden, or Lord Keeper of the Kingdom, and have therewith the general power of a King, as it was with *John Warren* Earl of *Surrey*, appointed thereunto by *Edward* the First, who had not only power to command, but to grant, and this power extended both to *England* and *Scotland*. And *Peter Gaveston* (though a Foraigner) had the like power given him by *Edward* the Second over *England*, to the reproach of the English Nobility, which also they revenged afterward. Sometimes these Vice-gerents are called Lieutenants, which seemeth to confer only the King's power in the Militia, as a Lieutenant-General in an Army. And thus *Richard* the Second made *Edmund* Duke of *York*, his Lieutenant of the Kingdom of *England*, to oppose the entry of the Duke of *Hertford*, (Afterwards called *Henry* the Fourth) into *England*, during the King's absence in *Ireland*: And in the mean

Rot. Pat. 24  
E. 1. m. 4.

Rot. Pat. 1 E.  
2. m. 2.

mean while the other part of the Royalty which concerned the Revenues of the Crown was betruſted to the Earl of *Wiltſhire*, Sir *John Buſh*, Sir *James Baggot*, and Sir *Henry Green*, unto whom (Men ſay) the King put his Kingdom to Farm. But more ordinarily the King's power was delegated unto one, under both the Titles of Lord Guardian of the Kingdom, and Lieutenant within the ſame; ſuch was the Title of *Henry Lacy* Earl of *Lincoln*, and of *Gilbert De Clare* Earl of *Gloceſter*, and of *Andomar De Valentia* Earl of *Pembroke*, all of them at ſe-  
Rot. Pat 4 E.  
2. Pf. 1. m. 18.  
 veral times ſo conſtituted by *Edward* the Second, as by the Patent Rolls appeareth: So likewiſe did *Edward* the Third, make his Brother *John* of *Elſham* twice, and the Black Prince thrice, and *Lionel* Duke of *Clarence*, and his Brother *Thomas* each of them once in the ſeveral paſſages of *Edward* the Third beyond the Sea, in the third, fifth, twelfth, fourteenth, ſixteenth, nineteenth, and thirty third years of his Reign concerning which ſee the Patent Rolls of thoſe years. And  
10 Hen. 5. p.  
1. m. 9.  
*Henry* the Fifth gave likewiſe the ſame Title and Authority to the Duke of *Bedford*, upon the King's Voyage into *France*; and afterward that Duke being ſent over to ſecond the King in the French Wars, the Duke of *Gloceſter* obtained the ſame power and place. But *Henry* the Sixth added a further Title of Protector, and Defender of the Kingdom and Church of  
7 H. 5. m. 23.  
1 Hen. 6. p 2.  
m. 3.  
*England*; this was firſt given to the Duke of *Bedford*, and afterwards he being made Regent of *France*, it was conferred upon the Duke of *Gloceſter*. And towards the latter time of  
32 H. 6. m. 7.  
*Henry* the Sixth, it was granted by him to *Richard* Duke of *York*. This Title carried along with it a power, different from that of a King only in honour, and the perſon ſo adorned may be ſaid to ſway the Scepter, but not to wear the Crown. And therefore in the minority of *Henry* the Sixth, when as the Government was ordered by the Parliament, and to that end a Protector was made, and he well guarded with a Privy Council, and they provided with inſtructions, one of them was, that in all matters not to be tranſacted ordinarily but by the King's expreſs conſent; the Privy Council ſhould adviſe with the Protector; but this is not ſo needful, in regard  
 that.

that it concerneth the power of executing of Laws, which by right of the liberty of the Subject is the known duty of the Scepter, in whose hands soever it is holden. And therefore I shall pass to the Legislative power, wherein it's evident that the Protector's power was no whit inferiour to the King's power. For First, The Protector, *Ex officio*, by advice of the Council, did summon Parliaments by Writs, even as the Kings themselves, under their own Teste; and if not bear the Royal Assent, yet did they direct the same, and received petitions in Parliament to them directed as to Kings, and every way supplied the Room of a King, in order to the perfecting, publishing, and enforcing of Law to Execution. Secondly, The Parliaments holden by Protectors, and Laws therein made, are no whit inferiour to those by the King, whether for Honour, or Power; And therefore if a Parliament be holden by the Lord Warden, and sitting the Parliament, the King in person shall arrive, and be there present; neither is the Parliament interrupted thereby, nor the power thereof changed at all; though the power and place of the Wardenship of the Kingdom, doth utterly vanish by the personal access of the King; because in all places, where the King is subservient to the Kingdom, or the Common-wealth, the Lord Warden in his absence is conservient unto him, being in his stead, and not under him, for the very place supposeth him as not, because not present. And this was by a Law declaratively published at such time as Henry the Fifth was Regent of France, and therefore by common presumption, was likely to have much occasion of residence in that Kingdom, and it holdeth in equal force with all other Laws of the highest size, which is the rather to be noted because it is (though under a Protector) obligatory to the King, and makes his personal presence no more considerable then the presence of his shadow. For the King spent three whole years in the French Wars, and during that time never saw England, where nevertheless, in that interim three Parliaments had been holden, one by the Duke of Bedford, and two by the Duke of Gloucester; in the last of which this Law was made, - And in truth if we look upon this Title of the Kingdoms

8 H. 5. c. 1.

doms Guardianship in its bare lineaments, without lights and shadows, it will appear little better than a Crown of Feathers worn only for bravery, and in nothing adding to the real ability of the governing part of this Nation: Neither were the persons of these *Magnificoes* so well deserving, nor did the Nation expect any such matter from them. *Edward* the First was a wise King, and yet in his absence chose *Edward* the Second to hold that place, he being then not above fourteen years of Age, afterwards *Edward* the Second's Queen, and the Lords of her party, were wise enough in their way, and yet they chose *Edward* the Third to be their *Custos Regni*, then not fourteen years old, his Father in the mean time being neither absent from the Kingdom nor deposed, but only dismissed from acting in the administration of the Government. *Edward* the Third follows the same example, he first makes his Brother *John* of *Eltham*, *Custos Regni*, and this he did at two several times, once when he was but eleven years old, afterwards when he was about fourteen: Then he made his Son, the Black Prince, upon several occasions three times Lord Warden of the Kingdom, once he being about nine years old, and again when he was eleven years old, and once when about fourteen years old. Lastly, *Edward* the Third appointed his Son *Lionel* Duke of *Clarence* unto this place of *Custos Regni*, when as he was scarce eight years old, all which will appear upon the comparing their Ages with the several Rolls of 25 E. 1. & 3, 5, 12, 14, 16, 19 E. 3. If therefore the work of a *Custos Regni*, be such as may be as well done by the Infants of Kings as by the wisest Counsellor, or most valiant Man; it is in my opinion manifest that the place is of little other use to this Common-Wealth than to serve as attire to a comely person, to make it seem more fair because it is in fashion, nor doth it advance the value of a King, one grain above what his Personal endowments do deserve.

Hitherto of the Title and power; the next consideration will be of the original Fountain from whence it is derived, wherein the precedents are clear and plain, that ordinarily they are the next and immediate off-spring of Kings, if they be present

sent within the four Seas; to be by them enabled by Letters Patents or Commission: But whether present or absent, the Parliament when it sat did ever peruse their Authority, and if it saw need, changed, enlarged, or abridged both it and them. Thus was the Duke of Gloucester made Lord Warden in the time of Henry the Fifth (he being then in France) in the room of the Duke of Bedford, the like also in Henry the Sixth's time, when as the King was young; for then the Parliament made the Duke of Bedford Lord Warden, and added unto that Title, the Title of Protector: Afterward at the Duke's going over into France, they committed that Service to the Duke of Gloucester (if I forget not the nature of the Roll) during the Duke of Bedford's absence and with a Salve of his right, Nor unlike hereunto was the course that was taken by the Parliament in these fullen latter times of Henry the Sixth, whereof more hereafter in the next Paragraph.

Lastly, The limitation of this high power and Title is different according to the occasion, for the Guardianship of the Kingdom by common intendment, is to endure no longer than the King is absent from the helm, either by voluntary deserting the work, or employment in Foreign parts; though united they be under the Government of the same King; together with this Nation, such as are these parts of France, Ireland, and Scotland, then under the English Fee: This is apparent from the nature of that Statute of Henry the Fifth formerly mentioned; for if there was need to provide by that Statute, that the King's Arrival and Personal presence should not dissolve the Parliament, assembled by the Authority of the *Custos Regni*; then doth it imply, that the personal presence of the King, by and upon his Arrival had otherwise determined the Parliament and that Authority whereby it sat. But the precedents are more clear, all of them generally running in these, or the like words, *In absentia Regis*, or *Quamdiu Rex fuerit in partibus transmarinis*. It is also to be granted, that the King's will is many times subjoynd thereunto, as if it were in him to displace them, and place others in his absence; yet do I find no precedent of any such nature, without the concurrence

of the Lords or Parliament, and yet that the Parliament hath ordered such things without his consent. For when *Richard* the First, passing to the Holy Land, had left the Bishop of *Ely* to execute that place during his absence in remote parts; the Lords finding the Bishop unfaithful in his Charge, excluded him both from that place and Kingdom, and made the King's Brother *John*, Lord Warden in his stead.

But in the Case of the Protectorship, which supposeth disability in the person of the King, the same by common intendment is to continue during the King's disability; and therefore in the Case of *Henry* the Sixth, it was determined, that the Protectorship doth *Ipso Facto*, cease at the King's Coronation, because thereby the King is supposed able to govern; although in latter times it hath not so been holden: For Kings have been capable of that Ceremony, as soon as of the Title, and yet commonly are supposed to be under the rule of necessity of Protectorship, till they be fourteen years of Age, or (as the Case may be) longer: For although *Henry* the Sixth was once thought ripe, when he was eight years old, yet in the issue he proved scarce ripe for the Crown at his two and twentieth year. Nevertheless, the default of Age is not the only incapacity of Kings; they have infirmities as other Men, yea more dangerous than any other Man; which though an unpleasant Tune it be to harp upon, yet it is a Theme, that Nations sometimes are enforced to ruminate upon, when God will give them Kings in his Wrath, and those also over to their own lusts in his anger. In such Cases therefore, this Nation sometimes have fled to the refuge of a Protector, and seldom it is, that they can determine for how long: When *Henry* the Sixth was above thirty years old, *Richard* Duke of *York* was made Protector, and Defender of the Realm, and of the Church; It was done (if the Record saith true) by the King himself, *Authoritate Parliamenti*: It was further provided by the Parliament, that though this was to continue, *Quandiu Regi placuerit*, yet the Duke should hold that place, till the King's Son *Edward*, should come to years of discretion, and shall declare that he will take that place upon himself.

Stat. Pat. 3.  
Hen. 6. m. 7.

The ground hercof is said to be, that the King was, *Gravi infirmitate detentus*, which could not be intended of any bodily dissemper; for neither doth any such thing appear by any Authour or Record. Nor if such had been, yet had it been an irrational thing in the Parliament, to determine the same upon the Princes discretion, and acceptance of the Charge upon himself. It seemeth therefore, that it was, *Gravis infirmitas Animi*, and that this way of the Parliament tended to a tacite sliding him out of the Government of the Kingdom, by a moderate expression of a general incapacity in his person.

The Conclusion of all that hath been said concerning this Title, is double: One, that both the *Custos Regni*, and Protector are not subsistent, but consistent with that of a King, because it supposes a King under incapacity.

Secondly, That they tend to teach the people a necessity of having one Chief; although it may, in truth, seem to be but a trick of State; like some pretty carved Cherubims in the Roof of a building, that do seem to bear it up, when as, in truth, it is the Pillars that support both it and them.



## CHAP. XVI.

### *Concerning the Privy-Council.*

Nations do meet with their Exigencies as well as persons, and in such condition, Resolutions taken up by sudden conceit, are many times more effectual than more mature deliberations, which require more time in composing, are more slow in Conclusion, let slip opportunities, and fall short of expectation in the end. Such are the ways of debate in the Grand Representative of the Kingdom. Add hereunto, that in putting the Laws in execution, greater discretion is required, than can enter into the head of any one Man, and greater speed than can stand with debate amongst many: And therefore it is beyond all doubt, that the Conventicles of Council, are no less necessary in their degree, than the Assembly of the Estates of this Nation, in their Grand Convention.

Yet with this Caveat, that one Genius may move in both; for otherwise the motions of Government must needs be inconsistent, inconsistent, and like that of an Hypocrite, one way abroad, another way at home; neither comfortable to it self, nor confiding to others: and therefore cannot these private Councils, by any proportion of Reason, be better Constituted, than by the Representative it self, that it may be a Creature made in its own Image, one and the same with the Image of the maker.

This was the wisdom and the practice of these times, more ordinarily than in the former; for the Parliament was no less jealous of the power of *Henry* the Fourth, than of the infirmities of *Henry* the Sixth; nor more assured in the aims of any of them all, then themselves were in their own Title to the Crown.

Neither was this sufficient, for the Parliament looked upon themselves as a body that sometimes must retire to rest, and

and upon the Privy Council, as Watch-men subject to change, and therefore they not only give them instructions but engage them unto observance. Their instructions were sometimes occasional but some more general, of which I shall instance only in two, which were to be of everlasting regard. First, That they should hold no pleas before them, that is to say, at the Council-Table, or at the Privy Council, nor before any of them unless as Judges in the Chancery, Exchequer, or Benches at *Westminster*, so as whatsoever miscarriages were had by the Privy Council in Cases of Judicature in the Star-Chamber formerly, are now reduced; The second rule was this, That no dispatches should be made at the Council-Table of any matters there agitated, but by general consent. Unity gives life to Action, carrying therewith both Authority and Power; and when all is done, must derive its original from without and in all good ends from above. And therefore as a seal to all the rest it was wisely done by the Parliament to draw the minds of the Privy Council together, and to present them jointly before God, by an Oath obliging themselves to a solemn and constant observance of their instructions, and to persevere therein: for the unchangeable God can only stamp a lasting Image upon the mind, and bind the same (that is so subject to change to an unchangeable Law) whereby the people may be made as happy for continuance as for Righteousness and Peace.

The Privy Council thus settled, dressed, and girt, becomes of high esteem, both for trust and honourable employment in great matters. The Mint is the very Liver of the Nation, and was wont to be the chief care of the Parliament it self in all the dimensions thereof; now the Mint is two ways considered, *Viz.* either in the value of the Metal and Money, or in the Coynage.

The first of these, and things most immediately concurring therewith, the Parliament still retains to its own immediate Survey; such as are the inhibiting of exportation of Gold, and Silver; and of melting of Coyn into Plate or Bullion; the regulating of the currant of Foreign Coyn, the reducing of Money,

Money, both Foraign and Domestick, imbas'd by Counterfa-  
cture, clipping, washing, &c. The regulating of allay of Gold  
and Silver, the regulating exchange, and such like; concerning  
all which, the Reader may please to peruse the Statutes, 2 H. 4.  
cap. 5, 6, 11, 13. 4 H. 4. cap. 16. 3 H. 5. Stat. 1. & 4. cap. 6. & 9.  
cap. 11. And 2 H. 6. cap. 6.

The second Consideration touching the Mint, concerned the  
election, and government of the Officers, touching the Mint  
and Exchange, or the places where they shall be holden, which  
with some other matters of inferiour Nature, were left to the  
Order of the Privy Council, either with the King, or alone, in  
Case of the King's absence or disability.

A second power given to the Privy Council, was in point  
of Trade, and Merchandize: formerly they had somewhat  
to do therein, but still the Parliament set out their bounds  
in Richard the Second's time, the people had liberty of Trade  
in some Commodities, by way of Exportation, but the Pri-  
vy Council might restrain them upon inconvenience to the  
publick: Now the same is confirmed, and though it con-  
cerned Corn only, yet it was a precedent that led the way  
to a much larger power in the Trade of the Staple Commo-  
dities of this Island, to enlarge or straiten it as they thought  
meet; and so they became in a fair way to have a prin-  
cipal power over the Revenues and Riches of this Nation.  
But this lasted not long, for within ten years, these Licen-  
ses of Transportation cost the Merchant so much, as he  
could make little gains of all his care and pains, and there-  
fore a rule is set to a general allowance of all Transporta-  
tion of Corn, till the price of Wheat came to a Noble, and  
Barley at three shillings, and no longer. This being first  
made Temporary, was afterwards made perpetual, and so  
gave a restraint unto the power of the King and Council.  
But where no positive restraint was made by any Statute,  
the King and Council seemed to have the sole power left  
unto them, to open and shut the passes of Trade as they  
pleased: For whereas the Commodity of Butter, and  
Cheese, was made Staple, the King and Council had  
power.

18 H. 6. c. 3. power to stop the sale thereof; notwithstanding, that the Law gave full liberty to the Subjects to bring all their Staple Commodities to the Staple: Nevertheless, this power in the King is not primitive, but derived from the Parliament, for they had Power over the King's Licenses, and Restraints in such Cases, as by the several Statutes do appear.

31 H. 6. c. 2. A third power given to the Privy-Council, was a power of Summons and Process against Delinquents, in Cases of Riots, Extortions, Oppressions, and grievous Offences; the Summons to be by Privy-Seal, the Process, Proclamations, and for Non-appearance, Forfeiture, if the Delinquent be of the Degree of a Lord, if of inferiour rank, then a Fine or Outlawry. At the first view the Statute hath an ill-favoured Aspect, as if it raised up a new Court of Judicature, but the time is to be considered with the occasion; for it was made for the securing of the peace, in a turbulent time. And besides, the Law carrieth along with it two Restrictions, which puts the right of Cognisance in the Privy-Council to the question.

First, It saveth the Jurisdiction of other Courts, and provideth further, *That no matter determinable by the Law of this Realm, shall be by this Act determined in other form, then after the course of the same Law in the King's Court, having determination of the same*; which implieth, that some kinds of Riots, and Extortions, are of so high a nature, that though determinable in the King's Court, yet are they to be determined before the Lords.

In the next place, this Law provideth, That such offences, as are determinable by the Law of the Realm, that is by Jury, shall still be so tried.

13 H. 4. c. 7. Secondly, If Conviction be upon Confession, or by Certificate, in case where (by reason of Parties, and partakings) Inquisition by Jury cannot be had, there the Lords shall immediately determine the same.

Lastly, If the Certificate be traversed, then the same shall be tried in the King's Bench.

But

But there is another Restriction that undoeth all, in effect, in point of right, because what this Law setteth therein, it setteth but for seven years, and leaveth the Privy Council to the limits of the Common Law for the future: In the mean time, the Privy Council may be thought terrible, and very high, both by this Law, and the greatness of the Lords. Kings Unkles, and Kings Brothers, are Subjects indeed, but of so high a Degree, that if a little goodness of Nature, or publick Spirit shine in them, they soon become the Objects of Admiration from the Vulgar, and gain more from them by their vicinity, than the King can do at a distance. For the Commons of *England*, by the fair demeanour of popular great Men, are soon won out of their very cloaths, and are never more in danger to part with their liberties, then when the Heaven is fair above their heads, and the Nobility serve the King, and flatter them. Nevertheless, as I said, the season must also be considered of this power, thus by this Law contracted; for what the Lords gained not by their popularity, the Queen did with her power; who now mindful of her contemned beauty, and opposition from the Duke of *Glocester* against her Marriage, removes him out of the way, gets the reins of Government into her hand and like a Woman drives on in full career.

The Duke of *York*, and other Lords, not liking this gallop, endeavour to stop her pace, but are all over-born, the Duke taken prisoner, and doubtless had pledged the Duke of *Glocester*, but that the Heir apparent of the House of *York* steps in to rescue; and new troubles arise in *Gascoign*, to put an end to which, the Queens party gains, and takes the Duke of *York*'s word for his good behaviour, gets this Law to pass, expecting hereby, if not a full settlement at home, yet at least a respite to prevent dangers from abroad, during the present exigency. And thus upon the whole matter, the Lords and Privy Council are mounted up by the Commons to their own mischief.

## CHAP. XVII.

*of the Clergy, and Church-Government, during these times.*

**I**T was no new thing in the World, for Princes of a wounded Title, to go to the Church-men for a plaister, and they are ready enough to sing a *Requiem*, so as they may be the gainers: The Princes therefore of the House of *Lancaster*, had offended against common sense, if they had not done the like themselves, being not only guilty in their Title, but also by a secret Providence, drawn into one interest together with the Church-men, to support each other. For *Henry* the Fourth, and Arch-Bishop *Arundel*, meeting together under one condition of Banishment, become Consorts in sufferings, and Consorts in Honour; for Society begotten in trouble, is nourished in prosperity, by remembrance of mutual kindnesses in a necessitous Estate, which commonly are the more hearty, and more sensible, by how much other Contentments are more scant. But the Arch-Bishop had yet a further advantage upon the heart of *Henry* the Fourth, though he was no Man of power, yet he was of great interest; exceedingly beloved of the English Clergy, and the more for his Banishment sake: Now whatsoever he is, or hath, is the Kings, and the King is his; the sweet influence of the Arch-Bishop, and the Clergy enters into his very Soul; they are his dearly beloved, for the great Natural Love (as he says to the World) they bear to him; what he could he got, what he got, he gave to the Church: Thus the Family of *Lancaster* becoming a mighty support unto the Clergy, Roman as it was; they also became as stout maintainers of the crackt Title of that younger House: So was fulfilled the old Prophecy of the Oyl given to *Henry* the First, Duke of *Lancaster*, wherewith *Henry* the Fourth was anointed, *That Kings anointed with that Oyl, should be the Champions of the*

*the Church.* Now for the more particular clearing of this, we are to consider the Church absolutely, or in relation to the Political Government of the people. Concerning the latter, many things did befall, that were of a different peice to the rest, in regard that the Lords for the most part, were for the Clergy, and they for themselves; but the Commons began to be so well favoured with *Wickliff's* way, that they begin to bid defiance at the Clergies self-ends, and aims: and because they could not reach their heads, they drive home blows at their legs.

A Parliament is called, and because the King had heard somewhat, feared that the people were more learned than was meet for his purpose, and that the Parliament should be too wise; he therefore will have a Parliament, wherein the people should have no more Religion than to believe; nor Learning, than to understand his sense, nor wisdom than to take heed of a Negative Vote: But it besel otherwise, for though it was called the Lack-learning Parliament, yet had it skill enough to discern the Clergies inside, and Resolution enough to enter a second claim against the Clergies Temporalities, and taught the King a Lesson, *That the least understanding Parliaments, are not the best for his purpose:* For though the wisest Parliaments have the strongest fight, and can see further than the King would have them, yet they have also so much wisdom as to look to their own skins, and commonly are not so venturous, as to tell all the World what they know, or to act too much of that which they do understand. But this Parliament, whether wise or unwise, spake loud of the Clergies superfluous Riches, and the King's wants are parallel'd therewith, and that the Church-men may well spare enough to maintain fifteen Earls, fifteen hundred Knights, six. thousand two hundred Esquires, and one hundred Hospitals more than were in his Kingdom.

This was a strong temptation to a needy and couragious Prince, but the Arch-Bishop was at his elbow; the King tells the Commons, that the Norman and French Cells were in

his Predecessor's time seized under this colour, yet the Crown was not the richer thereby; he therefore resolves rather to add to, than diminish any thing from, the maintenance of the Clergy.

Thus, as the King said, he did, though he made bold with the Keys of St. Peter; for he could distinguish between his own Clergy, and the Roman. The people are herewith put to silence, yet harbour sad conceits of the Clergy against a future time, which like a hidden fire, are not only preserved, but increased by continual occasions, and more principally from the zeal of the Clergy, now growing fiery hot against the Lollards. For that not only the people, but the Nobles, yea, some of the Royal blood, were not altogether estranged from this new old way; whether it was sucked from their Grandfather Duke John, or from a popular strain, of which that house of Lancaster had much experience, I determine not. These were the Dukes of Bedford and Gloucester; Bedford was first at the helm of Affairs at home, whilst the King acted the Souldiers part in France, as ill conceited of by the Clergy, as they slighted by him. At a Convocation once assembled against the Lollards, the Duke sent unto their Assembly his Dwarf, as a great Lollard, though he was a little Man, and he returned as he went, even as Catholick, as any of them all; *Non tam despectus à Clero, quam ipse Clerum despiciens atque eludens.* This, and some other sleights, the Clergy liked not, they therefore find a way to send him into France, to be a reserve to his Brother: And in his Room steps forth Humphrey Duke of Gloucester, that was no less cool for the Roman way than he. Henry the Fifth, was not more hearty in Rome's behalf, for although he was loth to interrupt his Conquest abroad, with contests at home, yet he liked not of advancements from Rome; inso-much, as perceiving the Bishop of Winchester, to aspire to a Cardinals Hat, he said, that he would as well lay aside his own Crown, as allow the Bishop to take the Hat. Nor was he much trusted by the Clergy, who were willing he should rather engage in the Wars with France, then mind the proposals

Aniq. 278



of the Commons, concerning the Clergies Temporalities, which also was renewed in the Parliament in his days. Above all, as the *Lancastrian* House loved to look to it's own, so especially in relation to *Rome*, they were the more jealous, by how much it pretended upon them, for its favour done to their House: And therefore *Henry* the Fourth the most obliged of all the rest, looked to the Provisors more strictly than his Predecessors had; and not only confirmed all the Statutes concerning the same already made, but had also provided against provisors of any annual Office, or profit, or of Bulls of Exemption from payment of Tythes, or from Obedience, Regular or Ordinary, and made them all punishable within the Statute; and further, made all Licenses, and Pardons contrary thereto (granted by the King) void against the Incumbent, and gave damages to the Incumbent in such vexations: for the former Laws had saved the right to the true patron, both against Pope, and King.

<sup>9</sup> Hen. 4. c. 8.

<sup>2</sup> H. 4. c. 3, 4.

<sup>7</sup> H. 4. c. 7, 8.

<sup>5</sup> H. 5. c. 4.

And thus the English Kings were Servants to the Church of *England*, at the charges of *Rome*, whilst the Popedom being now under a wasting and devouring Schism, was unable to help it self, and so continued until the time of *Henry* the Sixth, at which time, the Clergy of *England*, got it self under the power and shadow of a Protector, a kind of Creature, made up by a Pope and a King. This was the Bishop of *Winchester*, so great a Man, both for Birth, parts of Nature, Riches, Spirit, and Place, as none before him ever had the like; for he was both Cardinal, Legate, and Chancellour of *England*; and had gotten to his aid, the Bishop of *Bath*, to be Lord Treasurer of *England*: Now comes the matter concerning provisors once more to be revived.

First, More craftily by colloquieing with the Nobility, who now had the sway in the King's Minority, but they would none: An Answer is given by the King, that he was too young to make alterations in matters of so high Concernment, yet he promised moderation. The Clergy are put to silence.

16 Rich. 2. c. 5.  
Antiq. Brit.

silence herewith, and so continue till the King was six years elder, and then with Money in one hand, and a petition in the other, they renew their Suit but in a more subtil way: For they would not pretend *Rome*, but the English Churches liberties; they would not move against the Statutes of *Præmunire* but to have them explained; it was not much they complained of, for it was but that one word, *Otherwise*, which, say they, the Judges of the Common Law expound too largely, not only against the Jurisdiction of the Holy See, but against the Jurisdiction of the English Prelacy, which they never intended in the passing of those Laws: Their conclusion therefore is a prayer, *That the King will please to allow the Jurisdiction of their Ecclesiastical Courts, and that Prohibitions in such Cases, may be stopped.* But the King, either perceiving that the Authority of English Prelacy, was wholly dependant on the See of *Rome*, and acted either under the shadow Legatine, or at the best, sought an Independent power of their own: Or else the King doubting that the calling of one word of that Statute into question, that had continued so long, might endanger the whole Law into uncertainty, declined the matter, saving in the moderation of prohibitions. Thus the English Clergy are put to a retreat, from their reserve at *Rome*: all which they now well saw, yet it was hard to wean them: The Cardinal of *Winechester* was a great Man, and loth to lay down his power; but his own Tribe grew weary of him, and his power: For the greater some Church-men are, unless they be better then men, the inferiour, and better Church-men, are worse then men; at length therefore the Cardinal is Un- Legated, and that power conferred upon the Arch-Bishop of *Canterbury*, a Man formerly well approved, but by this very influence from *Rome*, rendred suspected; which he perceiving, protested against the Exercise of the Jurisdiction Legatine, without the King's allowance, and so mannerly crept into the Chair.

The English Kings and Clergy, having thus attained the right discerning of each other, begin to take up a new way of poli-

policy; which was to hold nothing of the Popedom, but the form of Worship, and Discipline; but as touching Jurisdiction, they held it a high point of wisdom, either to fetch it high at home, or to be silent in the matter; having now found a main difference between the Pope's will, and the Church-Law; and therefore, as formerly, the Convocation and Parliament joyned in excluding of Forainers from Church-livings, under the Notion of Intelligencers to enemies abroad: So neither now will they allow any provisions for English-men; and upon this ground the Dean and Chapter of *York* refused to admit the Bishop of *Lincoln*, to the See of *York*, although assigned he was thereto by Pope *Martin*, and he the Darling of Nations, being by joynt consent advanced to the Tripple-Crown, that had been formerly trippled amongst three Popes, and troubled all *Europe*: And whereas during the Tripapalty, much Money had been levied here in *England*, to serve for the recovery of the Popedom, to one of English Interest: Now by joynt consent the same is seized upon and stopped, as fewel from the fire, and spent by *Henry* the Fifth, in the recovery of a Kingdom in *France*, that should have been employed in recovery of a Popedom at *Rome*: these things concurred to give a wound to the Popedom, that was never cured to this day.

Holl.

Nevertheless, the English Clergy was no loser by all this, but gained in the whole sum: For as it made them more depending on the Crown, so it made the Crown more fast to them, from which they had received more real immunities and power, than the Pope ever did, or was able to give them, and might expect to receive many more. What personal respects these three Kings shewed them, had been already touched: *Henry* the Sixth added one favour, which made all the rest more considerable: Hitherto they had used to meet in Convocation, as upon the interest of *Rome*, and little notice was taken of them; now the Nation owns them, and in some respects their work, and it is granted, That the Clerks of Convocation called by the King's Whit, and their Menial Servants.

- 8 H. 6. c. 2. Servants shall have such priviledge, in coming, carrying, and going, as the Members of the Parliament have: So as though they be not Members, yet they are as Members, if they assemble by the King's Writ, and not only by the power of the Legate or Metropolitan. The Antiquity of this Court is great, yet not so great as hath been supposed; nor is it that Court of the Ordinary called the Church Gemot, mentioned in the Laws of *Henry* the First, as not only the works thereof, therein set down, do sufficiently declare, but also it's evident, that in *Henry* the Second's days, the Grand Councils of this Kingdom were joyntly mixed both of Clergy and Laity, nor could the Clergy shut the Laity from their Councils, till about the times of *Richard* the First, or King *John*. From which time forward the Laity were so far from protecting of them (till these times now in hand) that all their care was to keep them from violating the liberty of the people. That they were many times notwithstanding called together by the King's Writ before these times, hath also been cleared by another Pen. That their work at such times was to advise concerning such matters as should be propounded to them by the King in Parliament, their summons do shew; the particulars whereof, for the most part, concerned supplies of Money from the Churchmen, and yet sometimes matters of great moment were debated therein: as in a Convocation summoned by *Henry* the Fifth in his ninth year, the preheminance of Pope *Eugenius* above the Council of *Bazil* was debated, and as much as they could, determined the same: the credit of their decisions in former time, I believe was not much amongst the people, because the Men were looked upon with an evil eye: Now that the Parliament seemeth to own them in their way, and to protect them, their determinations are somewhat: The Churchmen clyp their opportunity, and whilst the benevolent influence of the State is in its first heat, they improve it in this manner. The times were now come about wherein light began to spring forth, conscience to bestir it self, and men to study the Scriptures: This was imputed to the idleness and carelesness of the Clergy, who suffered the minds of young Scholars

Mr. Will.  
Prynne.

Scholars to luxuriate into Errours of Divinity, for want of putting them on to other Learning, and gave no encouragement to studies of humane Literature, by preferring those that were deserving. The Convocation taking this into consideration, *Antiq. Brit.* do decree, that no person should exercise any jurisdiction in any Office, as Vicar-general, Commissary, or Official, or otherwise, unless he shall have first in the University have taken degrees in the Civil or Canon Law : A shrewd trick this was to stop the growth of the study of Divinity, and *Wickliff's* way: and to imbellish Mens minds with a kind of Learning that may gain them preferment, or at least an opinion of abilities beyond the common strain, and dangerous to be medled with, like some Gallants that wear Swords as Badges of Honour, and to bid Men beware, because they possibly may strike, though in their own persons they may be very Cowards ; and no less mischievously intended was this against the rugged Common Law, a Rule so nigh allied to the Gospel way, as it favoureth Liberty, and so far estranged from the way of the Civil and Canon Law, as there is no hope of accomodation till Christ and Anti-Christ have fought the field.

Thus much of the Church of *England*, in relation to the State, now as it is absolutely considered in regard of the several degrees of persons therein. Although these three Kings were much indeared to the English Clergy ; yet the difference between the Laity and them growing high, the King's principal care is now, to keep an even hand between them both, for he that will back two Horses at once, must keep them even, or put his joynts to the adventure : First, *Henry* the Fourth granteth, that no more shall be paid to *Rome* for the first-fruits of Arch-Bishops and Bishops, than hath been anciently used. The occasion hereof was to prevent the horrible mischief and damnable custom of *Rome* ; for such are the very words of that Statute, unto which the Clergy gave their Vote, if not the first Vote ; and therefore certainly did neither believe, nor honour that infallible Chair as their own Mother ; nor did they bear her yoke further than their own benefit, and reason of State did require, for though the immediate

benefit of this Law did descend upon the Prelacy; yet it also much concerned the interest, both of the honour and benefit of the Nation, that the Clergy should not be at the Pope's pleasure to Tax and Assess as he thought good.

2 H. 5. c. 1.

Secondly, *Henry* the Fifth added unto the Prelacy, some kind of increase, both of Honour, and Power, *Viz.* To visit Hospitals that were not of the King's own foundation, and to reform abuses there; for the Patrons either had no power to punish, or will or care to reform them; and thus upon the point, although they lost a right, yet they gained ease.

3 H. 5. c. 8.

Thirdly, The same King confirmed by a Statute unto Ordinaries, the Cognisance of accounts of Executors, for their Testators Estates, which formerly was granted by the Canon Law, but they wanted power to execute, and a right to have and receive: In all these the Clergy or Prelacy were the immediate gainers. In as many other things the people were made gainers, and yet the Clergy were no losers, otherwise, then (like the Kite) that prey which was none of their own.

First, They refused formerly to grant copies of Libels; either thereby to hinder the course of prohibitions, or to make the copies the more dear, and Money more cheap with them. *Henry* the Fifth, finding this a grievance to the people, passeth a Law, that all Ordinaries shall grant the Copies of Libels at such time as by Law they are grantable.

2 H. 5. Stat. 2.  
cap. 1.

Secondly, As the probate of Wills had anciently belonged to the Ordinary, by the Canon Law, and formerly also confirmed to them by the Parliament, so it also regulated and settled the Fees for such Service: But the Clergy having been ever under the nouriture of their Mother *Rome*, that loved to exceed, they likewise accounted it their liberty to take what they could get, but the nigher they come to engage with Kings in their Government according to Law, the more reformed they grow: Formerly *Edward* the Third had settled their Fees, but they would not hold to the rule, now the Law is doubled by *Henry* the Fifth, with a penalty of treble damages against Delinquents. Furthermore, the very Priests could not



not contain their *Pater-Nosters*, *Requiems*, *Masses*, and such <sup>3 H. 5. Stat. 2.</sup> wares they had engrossed, and set thereof what price they <sup>cap. 8.</sup> pleased: The Market was risen to that height, that *Edward* the Third undertook to set a rate upon those commodities, but that also would not hold long; *Henry* the Fifth he sets a certain stipend somewhat more then *Edward* the Third had done, <sup>2 H. 5. Stat. 2.</sup> and yet less then the Priests had formerly. <sup>cap. 2.</sup>

Lastly, Some Laws were made, wherein the Commonwealth gained, and the Church were losers. First, Whereas the Church-men formerly held all holy things proper and peculiar to their own Cognisance, especially such as concerned the Worship of God, the Parliament now began to be bold with that, and never asked leave. It had now for a long time, even since the Saxon times, been the unhappy condition of this Church of *England* amongst others; to decay continually in Piety and right Devotion, but through the light that now revived, and God's goodness, it in these times came to pass, that the people did entertain some sense of their duty towards God, more than formerly, and begin to quarrel the abuses done to the Lord's Day, in the manner of the keeping thereof: *London* hath the honour for beginning this Reformation by an Act of their Common Council. The Parliament within seven years after that, engage the whole Kingdom in <sup>27 H. 6. c. 5.</sup> that service (though therewith also are adjoynd other holy Feasts then holden). And all Fairs and Markets are enjoined to cease on that day, under pain of forfeiture of Goods exposed to sale, excepting Victual, and excepting the four Sundays in Harvest. And thus though places had their consecration allowed by the Parliament, and immunity from trading in Fairs, and Markets, by the space of a hundred and sixty years before this time, yet that time which God by his own Law had reserved to his own self, never came under regard to be allowed till now, and yet not by the motion of the Clergy, nor by their furtherance; for by their thrusting in the Holy-days, they made them equal with the Lords-day, and in Harvest time superiour, by preserving them in force, when as the Lords-days were set aside: So God had somewhat of these Men, but the Pope more

more. Secondly, As the Church-men lost in the former, so the Prelacy in this that follows.

2 H. 6. c. 11. The Prelates had long since obtained the Trial of Bastardy, and therein could strain themselves so far, as to put the Case of inheritance into danger, where the point otherwise was clear enough; and this grew to that height that it endangered the disinheriting of the Heirs of the Earl of Kent. It is therefore now provided, that before the Ordinary in such Cases proceed to trial, Proclamations shall be made in Chancery, to summon all pretenders of Interests or Titles to come before the Ordinary, to make their Allegations, and all Trials of Bastardy otherwise made shall be void; so as whatever the Canon did, the Parliament would not trust to the Ordinaries Summons, nor allow of their power in any other manner, than the Parliament thought meet. One thing more remaineth, wherein the true Church of Christ seemed to lose and yet gained; and the Clergy joyning with the King seemed to gain and yet lost; this was the point of worship, which had long stumbled the minds of the people, and was now grown to that strength, that nothing but an Act of Parliament can keep it under. This opinion concerning worship, was at the first so young, that it was not yet baptized with any proper name, but called, Opinion contrary to the Church determinations, or Catholick Faith. And against this the Clergy now stormed, more than ever formerly, because it was grown to such a height as if it meant to over-top theirs. To this end they procure an Act to pass.

2 H. 4. c. 15. That all Preachers, Teachers, Writers, School-Masters, Favourers, or notoriously defamed Persons, for the maintenance of such opinions, shall be (upon conviction before the Ordinary, according to the Canons) imprisoned in the Diocesans Prison, Fined according to the Diocesans discretion.

If upon Conviction, he shall not abjure, or shall relapse, he shall be delivered unto the Secular Power, and be burned.  
And that Preachers without License of the Diocesan, should be restrained.



Concerning which Law, I shall first shew what change in the Laws of this Kingdom was endeavoured, and what was really effected.

First, It is an undeniable ground, that no Freeman can be put to answer before any Judge, but upon presentment, or other matter of Record foregoing, and by due Process of Law; and yet it had been ruled, that strong presumption, and complaint of credit after it is entred, is sufficient Record, to ground proceedings in this Case; to attach the party to Answer. But by this Law a Trial is introduced, that neither resteth upon any peremptory accusation, or proof of witness, but meerly upon Inquisition, upon the Oath and Conscience of the party suspected; which in the latter days hath been called the Trial upon the Oath; *Ex Officio*; for such was the Trial allowed by the Canon in these times; as appears in the Constitutions of *Otho*, and the Decrees of the Arch-Bishop *Boniface*, by whom it was endeavoured to be obtruded upon the Laity, about the times of *Henry the Third*, or *Edward the First*; but even the Clergy then withstood it, as *Lindwood* confesseth. And *Otho* in his very Constitution, doth hold this forth by that clause of his, *Non obstante obtenta consuetudine*. 42 E. 3. c. 3.  
10 Hen. 7. fol. 17.  
Otho de Fur.  
Fur. Calumn.  
Lind. de Jure Furan. 2.

Secondly, This Law doth endeavour to introduce a new Judge, with a power to Fine and Imprison according to discretion, and a prison allowed to him as his own peculiar, and yet the Writ, *De cautione admittenda*, still held its power, to regulate that discretion as formerly it had done; which by the way may render the power of this Law suspicious.

Thirdly, The Clergy are not content to have the Estates, and Liberties of the bodies of the people at their discretion; but they must also have their lives, although no Freeman's life could by the Fundamental Laws of this Kingdom, come to question, but by the judgement of his Peers; nor could the Clergy by their own Canons interesse sanguine, *Viz. They cannot put any Man to death, but by this Law they may send any Man to death by a Sentence, as sure as death, Tra-*

distur

*datur potestati seculari*: And such a death, not as the Civil Magistrate is wont to execute by a speedy parting of the Soul from the Body, by loss of blood, stop of breath, or such like; but the Clergy must have blood, flesh, bones, and life and all, even to the edge of non-entity it self, or they are not satisfied: And thus the Writ, *De comburendo Hæretico*, entred into the World. True it is, that some sparks of this fire are found in former times, and *Bracton* toucheth upon such a Law, in Case of a Clerk convicted for Apostacy, *Primo degradetur, & post per manum Laicalem Comburatur*, which was indeed the Canon, and that by his own Confession; for it is grounded upon one, *Secundum quod accidit*, in the Synod at *Oxford*, under Arch-Bishop *Becket*: but that Case concerneth a Clerk, who by his profession hath put himself under the Law of the Canon, and it was only in Case of Apostacy, himself being turned Jew; and this also done upon a sudden pang of zeal and power of an Arch-Bishop, that would know no Peer; nor do we find any second to this Precedent by the space of two hundred years next ensuing; neither doth the decree of Arch-Bishop *Peekham*, who was not long after *Becket*, treating about Apostacy in Lay-men, mention any other punishment then that they are to be reclaimed, *Per censuras Ecclesiasticas*; nor yet that of Arch-Bishop *Arundel*, amongst the Constitutions at *Oxford*, not long before this Statute, who treating about the crime of Heresie, he lays the penalty upon forfeiture of goods, with a *Præsertim*, as if it were the grand punishment: And *Lindwood* in his gloss upon that place; setting down the Censures against Heresie, *Hodie sunt* (saith he) *damnandi ad mortem*, as if it were otherwise but as yesterday.

Fourthly, the next endeavour is to bring the cognisance of all, wholly to the Ecclesiastical Court, without further Appeal; for so the words concerning Conviction of Heresie are: *Whereupon evidence shall be given to the Diocessan of the same place, or his Ordinary in that behalf.*

These changes, I say, were endeavoured to be brought upon the Government of this Kingdom; and yet the Law for all this, suffered no change, nor did the House of Commons (how-

ever

*Lind. lib. 5. de  
Apostat.*

*Lind. lib. 5. de  
Hæret. fol. 159.*

ever the name is thrust into the English Ordinary Print) ever yield unto the passing of the same, but in the Parliament next ensuing, complained thereof, and protested they would not be bound by such Laws, whereto the House of Commons had not given their consent; and this dashed the Law quite out of countenance (although it holds the place still amongst the number) for within four years after, the Clergy bring in another Bill of the same nature in general, though varying in some particulars, but the same was again rejected. 8 H. 4.

All the strength therefore of this Law, resteth upon the King and House of Lords, engaged by the Clergy, to whom they trusted for their Religion (for Book-learning was with them of small account) and no less by the King, who knew no better way to give them content, that gave him so much as to set the Crown upon his Head; nor to discharge his Royal Word, passed by the Earls of Northumberland and Westmerland, in his behalf unto the Convocation, *Viz. That they were sent to declare the King's good Will to the Clergy, and Church Liberties, and that he was resolved to defend all the Liberties of the Church by his Kingly Power, and to punish Hereticks, and the Churches Enemies in such manner as the Clergy should think meet; and therefore desired their daily Prayers for his own, and the Kingdoms safety.* And yet for all this, the people were not of this mind; Antiq. Brit. 273.  
no small part of the Kingdom being overspread with these Walsingham, 157.  
Opinions. Ips. Newstr.

After Henry the Fourth, comes Henry the Fifth, and he also makes another assay; the former opinions then known only by the general names of Heresie, are now baptized, by the new name of Lollardry, and grown so overspreading, that all the troubles of these times are still imputed to them. It was indeed the Devils old and common trick, thus to inrage earthly powers against these Men, although he be hereby but an instrument in the hand of the Chief Builder, that in laying a sure foundation, doth as well ram down, as raise up; for the malice of these Men made the people of God to multiply: Henry the Fifth, also published a Law to this same.

2 H. 5. c. 7.

*That all Persons in place of Government, shall swear to use their diligence, to destroy all Heresies and Errors, called Lollardries.*

*That all Lollards convicted by the Clergy, (left to the secular power, according to the Laws of Holy Church) shall forfeit their Lands and Tenements to their Lords: And the King to have the year, and day, and Waste, and all his Goods and Chattels.*

*If the Lord be the Ordinary, the King shall have all.*

*No forfeiture to be, till the Delinquent be dead.*

*They shall be found by Indictment before the Justices of the Peace.*

*This Indictment being found, shall be sent to the Ordinary with the Prisoner.*

*The Indictment shall not be for Evidence, but only for Information.*

These are the principal things contained in this Law, which by the manner of the compofure, seemeth to be of an uncertain colour, neither made by the Clergy, nor Laity, but spoiled between them both. The intent thereof seemeth to be principally to draw on the House of Commons to pass the Law, under hope of gain by the forfeitures; for the penalty is like that of Felony, though the crime be not expressly declared to be Felony. But the intent fell short in event.

For First, The nature of the Crime is not defined, nor declared by any Law, and therefore can no Man by Indictment be found to be such.

Secondly, No penalty of death, hath been by any former; or by this Law determined upon such as are guilty, for it's not enacted by any Law, that such persons shall be delivered to the Secular power, &c.

Thirdly, this Statute determining the forfeiture to be not till death, and neither that, nor any other Law of this Kingdom determining death; then is no forfeiture determined.

Fourthly, Though this Law taketh it for granted, That Heretic and Errours belong to Ecclesiastical Cognisance, yet the same

same allows of no further proceedings, than Ecclesiastical censures.

Lastly, By this Law, there can be no proceeding, but in case of Indictment, (for otherwise, without Record, no forfeiture can be) therefore, where no Indictment is, there is no forfeiture. In all which regards, it's evident that the Clergy could by this Law, neither get fat nor blood; and therefore at their Convocation in the next year following, they took another course, *Fox. Martur.* 1589. and ordered that three in every Parish, should make presentment upon Oath, of such persons as are defamed for Hereticks, and the truth so far as they can learn; which puts me in mind of a presentment, that I have seen by some of *St. Mary Overies* in these times: *Item, we saine, that John Stevens is a Man we cannot tell what to make of him, and that he bath Books we know not what they are:* This new course shews plainly, that the former held not force as they intended it. So God blatted the practices of the Clergy at this time also, rendring this Law immaterial that had the form, as the other missed in the form, and had the matter.

## CHAP. XVIII.

### *Of the Court of Chancery.*

**I**T often befalls in State-Affairs, that extraordinary Exigencies require extraordinary remedies, which having once gotten footing, are not easily laid aside, especially if they be expedient for Prerogative. The Privy Council in the Star-Chamber, pretending default of the Common Law, both in speed, and severity, in Cases whereby the State is endangered: The Chancery pretends default by the Common Law in point of equity, and moderation: The people taken with these pretences, make that Rod more heavy, which themselves had already complained of: What the Chancery was in times past hath been already shewed; still it is in the growing and gaining hand.

4 H. 4. c. 2.

First, In the Judicatory power it prevailed in relation to the Exchequer, exercising a kind of power to survey the proceedings thereof, in Cases of Commissioners distrained to account, for Commissions executed, or not executed; for it was no easie matter to execute Commissions from the Exchequer in those times of parties; nor were Men willing with such unwelcome occasions, between Friends and Neighbours; and it may be, they grew weary of embroiling themselves one against another, and of being Instruments of the violent counteractions of Princes, and great Men.

Secondly, It gained also upon the Admiralty, which by former Laws had Jurisdiction in all Cases incident upon the great Sea; but now either through neglect of the Admiral, or the evil of the times, occasioning Piracies to grow Epidemical, the ill government upon the Sea became dangerous to the State, trenching upon the Truce made between this and other Nations.

2 H. 5. c. 6.

For a remedy whereof, first Conservators of the Truce, were settled

settled in every Port, who had power committed to them to punish Delinquents against the publick Truce, both by Indictment at the King's suit, and according to the course of the Admiralty by complaint, saving matters of death to the Cognisance of the Admiral. But this was soon found defective, for Justice done in the dark, is many times more respective, and less respected, and therefore within a few years, it is provided, that Offenders against the King's Truce upon the Sea, or in any of the Ports, shall be proceeded against in the Chancery, before the Chancellour, who hath power given him, calling to his Assistance some of the Judges to execute the Statute of 2 H. 5. foregoing, by a handsome contrivance: For that Statute was once and again suspended for the rigour that was used by the former conservators, who being borderers upon the Sea, for their own peace, spared as few as they could, which had so discouraged the Seamen, that the Kingdom had been almost utterly bereaved of its strength at Sea. Nevertheless, all this while, these Laws were but penal, and not remedial, for the parties wronged: And therefore another Law is made, to give the Chancellour and Judges power to make restitution and reparation. 26 H. 6. c. 2.  
14 H. 6. c. 8  
20 H. 6. c. 11.

Thirdly, the Chancery gained upon the Ecclesiastical Court: for whereas by the Canon, the Church-men were to be judged by their Superiours, according to Ecclesiastical and Ordinary Jurisdiction; and the iniquity of the times, was again returned to that height, that Parents could not enjoy their own Children; but the little ones were allured, stol'n away, and detained in Cloysters; nor did the Church-men afford remedy in such cases: A Law was made, that, upon complaint hereof made to the Chancellour, the Provincial should be by him sent for, and punished according to his discretion. 21 H. 6. c. 4.  
4 H. 4. c. 17.

Lastly, The Chancery encroached upon the Common Law: For whereas the strife between the two Houses of York and Lancaster, began to rise, Men made their dwellings in places of security, and strength; Women likewise and other persons flying thither for refuge; especially, such of them as had most to lose; these were contrary to the Law

of common honesty, urged to engage their Estates unto the desires of such, to whom they had fled for Refuge, and sometimes compelled to marry, before they could gain their liberty.  
 31 H. 6. c. 9. It was now provided that all such complaints should be heard and determined by the Chancellour.

4 H. 4. c. 8. Secondly, As touching the Ministerial power of the Chancery,  
 13 H. 4. c. 7. this likewise was enlarged in making of Process to compel  
 2 H. 5. c. 9. appearance in cases of Forcible Entries, Murders, Murtherers, Robberies, Batteries, Assemblies in nature of Insurrections, Riots, and Plunder, committed by Servants upon their Masters goods, before their Masters death, and such like offences now grown common, and in need of sudden remedy.

Thus as the work and power of the Chancery grew, so did the Place and Person of the Chancellour grow more considerable, raised now from being the King's Secretary, (for no better was he in former times) to be the Kingdoms Judge, and of such Trust, that although the King might make Election of his own Secretary, yet the Parliament would first know, and allow him, that must be trusted with the power over the Estates of so many of the people: And therefore did in these times, both place, and displace him as they saw expedient.

2 H. 4. c. 11. In a word, he is become the Kingdoms Darling, and might be more bold with the Common Law, then any of his Peers.



## CHAP. XIX.

### *Of the Courts of Crown-Pleas, and Common Law.*

AS the Chancery on the one side did swell and encrease, so was the King's Bench in an Ebb; the Council Table in the Star-Chamber on the one side, and the *Itinerant* Courts in the Countrey intercepted, and drew away much to their own shares: Making themselves fat, the King's Bench lean, and the Rural Courts for Crown-Pleas almost to starve. The Crown-Pleas formerly had been determinable in the King's Bench, Gaol-delivery, *Oyer* and *Terminer*, and many of them by Justices of the Peace, Coroners and Sheriff. The Gaol-Delivery was afterwards united to the Judges of Assize, and if one of them were a Clergy-man, then to the other, and chief Men of the County. This was useful for the publick, but not beneficial for some Men; and therefore they laboured for Commissions, especially directed to parties, that they thought would partake; but these were found soon to be dangerous, soon taken away, and the Gaol-delivery restored to the Judges of Assize, as formerly. The Commissions of *Oyer* and *Terminer* were sued forth upon extraordinary emergencies, and offences, wherein the State was much concerned for speedy Execution. In former times both these and Gaol-deliveries were but rarely had, and then granted unto some, that perchance knew more of the Case, then before hand was meet to be known. *Edward* the Third amended this Errour, and ordered that no Commissions of *Oyer* and *Terminer* should issue forth, but unto Commissioners named by the Court, and not by the party complaining, But the Judges of Assize are now in the growing hand, both for Honour, Use, and Power, the rather, because their persons are of high repute in the Benches at *Westminster*, which are the Master-pieces of Judicature, and their *Iters* are constant and ordinary: Nevertheless,

2 E. 3. cap. 2.

34 E. 3. c. 1.

the

the Judges of Assize, though they have the Gaol-delivery annexed to them, yet have they not that absolute power of the King's Bench; but are still under the rule of their Commission, which is not alterable, but by Parliament, and which by it was altered, by way of adding of new powers as new crimes arose, that required the eye of the State to provide, and so the Judges of Assize by degrees grew to be the ordinary Administrators of Justice throughout the Kingdom, yet holding still forth to them a limited power, to hear and determine in some Cases; but in others only, to enquire, and certify, as in the case of false returns by the Sheriff, of persons elected for the Parliament: And also in cases concerning the Statutes of Labourers, and unlawful games, and pastimes; in which case the Certificate is to be made to the Chancellor: And also in cases concerning Liveries, contrary to the Statutes wherein the Certificate is to be made to the King's Bench; which power in this last case, continued in that manner by the space of thirty years; and then by another Statute, they had the power to determine such cases before themselves: In like manner they had power to hear and determine cases of falsehood, in counterfeiting and corrupting of Money, by washing, clipping, &c. And also defaults committed by Sheriffs, Bailiffs, and their Officers against the Statutes of Forcible Entries, and of wearing of Liveries, as aforesaid.

These were signs of much confidence and trust in them, and yet notwithstanding in these, nor none of these, were the penalties by Fine left to the Arbitry of the Judges; no, nor to the Justices of the King's Bench, but were by the very Letter of the Law determined. Nor would the Parliament trust these Men with doing Justice in the cases aforesaid; in their own Counties where they dwelled, nor did it think expedient to allow the chief Justice of the King's Bench unto that Service in any of them all, but only once in the County of *Lancaster*, and then only at the King's pleasure; otherwise, it was to be as was used by the space of one hundred years foregoing; possibly because his power was too great to be trusted amongst the people.

Lastly,

Lastly, The Judges of *Nisi Prius*, were anciently made by *Edward* the First, by whom also the Assizes were settled at certain times of the year, and afterwards by the Statute of *York*, the *Nisi Prius* in smaller cases was granted, before one Justice of the Bench, where the plea dependeth, and one substantial Man of the County; but those of greater concernment were to be had before two Justices of that Bench, or in case they were wanting, then before Justices of the other Bench, or in default of them, before the chief Baron, if he were a Man of Law, and in default of that, before the Judges of Assize. Therefore in those days, the Justices of the Benches in their *Iters* in the Counties, divided in their power; Some being for Assizes, others for *Nisi Prius*; and in some times and cases, some were for both: For in those times of *Edward* the Third, Judges of Assize had power to enquire in some matters that concerned the Crown, or to try *Nisi Prius*, nor were these powers united, till in *Henry* the Sixth's time, Justices of *Nisi Prius* had the power of *Oyer* and *Terminer* annexed to them, in all cases of Felony, and Treason.

What was formerly provided by *Edward* the Third, and *Richard* the Second, for instruction to these Judges, and to bind them thereto by solemn Oath, I shall not particularly mention, but shall leave the consideration of the Original of the whole Judicature of this Nation, unto the Readers observation upon the premises.

## CHAP. XX.

*Concerning Sheriffs.*

**H**ENRY the Fourth, after a small rest in his Throne, though he always sat loose, sought after the civil Peace, as the corner Stone of his subsistence; and that by a way of Justice, which found more acceptance with the vulgar, than the common Education of the greater number in these times could promise; for the worst of Men cannot endure to suffer injustice, though themselves will do it. Now because where Kings are reputed to be the Fountain and Life of Justice, Sheriffs may be reputed to be the breath thereof; and by their irregularities, do render the Government of the King, as loathsome, as unfavoury breath doth the person whose it is: Therefore Henry the Fourth chose rather to be a loser in his Farm-Rents of the Sheriff-wicks, than to occasion the Sheriffs to save their bargains by oppression: And to this end he took away the course of forming of Sheriff-wicks, and made the Sheriffs bare accountants for the Annual profits; and as touching the casual profits the Sheriff discharged himself upon Oath. This was a good security to the King, but yet the people was not herewith satisfied; For though the Sheriffs might not take to Farm, yet what they had, they might let to Farm; And then wherein are the people the better for these Laws? Seeing it's all one for them to be oppressed by the Sheriff immediately; and by the Proxy.

For preventing of this inconvenience, another Law is made; That the Sheriff shall not let his Bailiwick to Farm, nor be non-resident, and to this he must bind himself by Oath: So as now the Sheriff is double girt, and may be fairly ridden, without doing it to the King or people. But Men ride Horses for ease and pleasure, and he that must bend his mind always to manage his Horses motion, will choose rather to go on Foot; and therefore

1 H. 4. c. 11.  
4 H. 5. c. 2.  
4 H. 4. c. 5.

Henry the Fifth renewed the Law of Richard the Second, that 1 Hen. 5. c. 4.  
Sheriffs shall be but for one year, and then not to be chosen a-  
gain, nor serve for three years next following. This order  
continued for the space of eight years, within which time, War  
and Pestilence had consumed so many of the richer sort of 9 H. 5. c. 5.  
people, that a Dispensation is granted, that Sheriffs may continue  
in their places for four years. And if was above twenty  
years after, ere the Stock was recruited again; after which  
time, the substance of the former Statutes of Edward the  
Third, Richard the Second, and 1 Henry the Fifth is revived a- 25 H. 6. c. 8.  
gain, with a penalty upon the Sheriff, his Deputy, or Clerk,  
that shall execute that place above one year; so the custom of  
holding that Office ten or twelve years, by occasion of the  
Dispensation for four years was laid aside: But the Cure would  
never be perfect, so long as Sheriffs held by Inheritance: For  
it was easie to find new Deputies, but not to lay down old  
Customs, nor could it be lasting, unless the penalties also had  
been annexed to the particular crimes.

For a Sheriff before he is a year old, by experience formerly  
had, becomes too cunning for all these Laws; and therefore  
Laws are made also against the ordinary corruption of these  
places, such as are extorting of Fees, false making of Juries, 4 H. 6. c. 1. 6.  
false returns of Writs, &c. and damages in such cases given to cap. 4. 15.  
the party wronged; and when all is done, he is not trusted cap. 5. 18. c. 14.  
with taking of Indictments. Thus with much ado, a Sheriff 23. cap. 10.  
is made a tolerable Officer, and his place by Degrees so hedged 28 E. 3. c. ult.  
in, that what was in former times hard to pluck up, is now be-  
come hard to set.

## CHAP. XXI.

*Of Justices and Laws concerning the Peace.*

THE faint Title of *Henry the Fourth* to the Crown, made him ever tender of the Civil Peace, without breach whereof, he was sure to be quiet in the Throne; he undertook not this work by any superlative power, from and by himself, but useth the help of the Parliament, and Laws, wherein he was industrious; pretending love of Unity amongst his people, which neverthelſs he liked not, unless in order to quiet between himself and them. The former way of Justices of Peace he followed close, reducing the persons to their ancient qualifications. The most sufficient persons, Inhabitants in the County, worth at least twenty pound yearly, unless they be Lawyers, or such as are Justices in Corporations; nor is the King troubled or trusted with the naming or electing of these Men, but the Chancellour, or the King's Council; so as now by Law the King can neither be Justice, nor make Justice, *Jure proprio*, but as his interest with the Council is more or less prevalent, and that power that first gave it to the Crown, the same power took it away, or imparted, and placed it elsewhere. But as touching the Work or Power of the Justices themselves, it grew exceedingly, much whereof was only of enquiry and to make Certificates, as of Heresie, Treason, Falshood of Sheriffs, &c. But more of Oyer and Terminer, as in case of Watches, deceitfulness in Trades; as of making arrow heads, guilding of Metal, tanning of Leather, imbuting of Silver, selling of waxen Images and Pictures, &c. for the superſtitious of these times was such, as these petty gods were not set at so high a price by the Seller, but a higher price by the Buyer; the Parliament therefore set a truer value of them, *Viz.* For the Wax, so much as the Wax is worth by weight, and but four pence for the god-head; so as it seems, the Parliament was not very superstitious in their House, whatever they

they were at Church. Furthermore, the Justices of the Peace had power to punish deceit in Measures, Weights, Forcible Entries, and Detainers. In many of which Cases, the penalty being Fine and Imprisonment, became a snare to many of the Justices, especially such as were of the greater and higher rank, who having Castles of their own, under colour of Justice imprisoned Delinquents in their own Castles, and ransomed them at their own pleasure; which proved a great oppression to the people, and occasioned a Law that no Justice should commit any Delinquent to other then the County Gaol, saving Franchises to the Lords. Those times are happy when Justice waits not altogether at Court, but grows up in the Fields, and Justices of Peace, as the King's Arms upon the Royal Mace are terrible only to the bad; and not as they are pictured before an Ale-house door, to invite Men to transgress.

1 H. 5. c. 10.  
9 Stat. 2 c. 8.  
2 H. 6. c. 11.  
11 H. 6. c. 8.  
13 H. 4. c. 7.  
C. 2.  
4 H. 5. c. 8.  
5 H. 4. c. 10.

The Laws for the preservation of the peace concern either punishment of Crimes committed, or prevention of them from being committed: There is a succession of crimes, as of Men and Ages, because the Scripture tells us, that the hearts of all are fashioned alike, yet it is with generations as with Men, some encline to some Crimes more than other, and that is the reason that the title Treason, sometimes is set forth in Folio, sometimes in a lesser Volume. It's evident in Story, that the violent times of *Richard* the Second, had raised the value of that, amongst other offences, above measure; not long before his time, his Father had reduced that wild Notion of Treason to a certain rule, that formerly wandered in a Wilderness of opinions. But *Henry* the Fourth, either to save his own Stake, or to take the people, or both, reduced it again to the Statute rule of *Edward* the Third, and made void that Statute of his Predecessors, which had made a former Act of Parliament, (and all the service thereby done) Treason. The dimensions of Treason thus clearly limned and declared, taught ill disposed minds to keep out of the Letter, and yet to be bold with the sense; counterfeit Money they durst not, yet to diminish the same they thought came not within the Circle, and so it became a common grievance, till a Law was made,

1 H. 4. c. 10.  
3 H. 5. c. 5.

that all purposed impairing of Money shall be Treason. And so the Parliament held forth to all Men that they had a power to declare Treason, without the bounds of the Statute of Edward the Third. The like power it held forth in the time of Henry the Sixth, for Men knew that Burglary and Robbery were mortal crimes, they would no more of that, now they devise a way to spoil, and prey, for themselves, and yet neither to rob, nor break House. To this end they would scatter little Scrolls in writing, requiring the party that they intended to prey upon, to leave so much Money upon such a day, at such a place, and this was *Sub-pena*, of burning the parties House, and goods: which many times did ensue upon default made, this practice was at once made Treason, to prevent the growth of such an evil. And the like was done with Robberies and Man-slaughters, contrary to the King's Truce, and safe-conduct.

As many or more new Felonies were also now created.

One was the cutting out of Mens Tongues, and plucking out of eyes, a strange cruelty: and that shewed the extreme savageness of those times, so much the more intolerable, by how much the poor tortured creature could hardly be either eye or ear witness, of the truth of his own wrong.

A second Felony was, the Customary carrying of Wool, or Wool-fells out of the Realm, to other places: except *Calais*.

Another Felony, concerneth Soldiers, which I refer over to the next Chapter.

The last was, Servants plundering their Masters Goods, and absenting themselves, if upon proclamation made, they appear not, this was also made Felony.

In the next place, as touching Forcible Entries, and Riots, the remedies so often inculcated, and new dressed, shew plainly the nature of the times: These kind of crimes commonly are as the light skirmishes in the beginning of a War, and follow in the conclusion also, as the faintings of a battel fought till both sides be weary.



I shall not enter into each particular Statute, divers of them being little other than as asseverations annexed to a sentence, to add credit; and stir up minding in men, that otherwise would soon forget what is said or done: The remedies formerly propounded are now refined and made more effectual.

First, In regard of speed, which is as necessary in these forces, as the stopping of the breaches of Waters, in the first Act, and therefore one Justice of the Peace may proceed upon a holder by force, or breaker of the Peace, with a *Continuando*, but Riots are looked upon as more dangerous; and the first opposition had need be more stiff, least being uneffectual, aggravates the violence, and therefore it's required that two Justices, and the Sheriff should joyn in the work, to carry on the work with more Authority and Power. And what they cannot do in the punitive part, they must certify to the King and his Council, or to the King's Bench if Traverse be made: So as though the power of the County be annexed to the Sheriff, *Jure ordinario*, to maintain the Peace, yet the Parliament did delegate the same upon Justices, as it thought most expedient.

To maintain and recover the Peace when it's broken, shews more power, but to prevent the breach, shews more Wisdom, and therefore to all the rest, the Wisdom of these times provided carefully.

First, For Guards and Watches, according to the Statute at *Wint.* and committed the care thereof to the Justices of the Peace.

And Secondly, Against the gendring of parties, for it's commonly seen, that such as are admired for excellencies of person, are so far idolized of some, as that their gestures, actions, and opinions are observed; tokens of favour (though never so small) are desired from such, and the Idol likes it well, gives Points, Ribbons, it may be Hats, and with these Men are soon gained to be Servants in the fashion, and not long after to be Servants in Action; be it War, or Treason, or any other way.

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This manner of cheat, the former times had been too well acquainted with; Knights and Esquires, are not to be feared in times where the word Lord carries the wonderment away, their offences against the Statutes of Liveries, are all great, though in themselves never so small; and therefore are sure of Fine, and Ransome, and it's well if they escape a years imprisonment, without Bail or Mainprize. Lords may wear the King's Livery, but may give none; Knights and Esquires may wear the King's Livery in their attendance upon his person, but not in the Countrey: The King and Prince may give Liveries to Lords and menial Servants. The sum is, that Liveries may be given by the more publick persons for State, not to make parties; and Men may wear Liveries in token of Service in Peace, and not in Arms.

1 H. 4. c. 7.

8 H. 6. c. 4.

2 H. 4. c. 21.

20 H. 6. Stat. all,

2. cap. 6.

One thing must be added to all, which may concern Trial in all, *Viz.* A Law was now made, that noble Ladies shall be tryed by their Peers; A Law now of the first stamp, and strange it is that it never came before now into the breast of the Law, but that it came now, it is not strange; no meaner person than the Dutcheſs of Gloucester is first charged with Treason; when that could not appear, then for Necromancy, very fitly, that she might be tryed by the Ecclesiastical way of witnesses; She is found guilty, and a sentence of penance, and imprisonment or banishment passed thereupon, after such a wild way, as both Nobles, and Commons passed this Law, for the Vindication of that noble Sex, from such huddling Trials for the future.

## CHAP. XXII.

### *Of the Militia, during these times.*

THE Title of *Henry* the Fourth to the Crown, was maintained principally by his Tenures, which the Courtiers call Knight-service, but the common people, force of Arms; and that which destroyed many a Man, was the principal means of his subsistence. Otherwise it's clear, that his Title was stark naught; nor could he outface *Mortimar's* Title, without a naked Sword, which he used warily; for he had Enemies enough to keep his Sword in hand, and Friends enough to keep it from striking at random: for coming in by the peoples favour, he was obliged to be rather remiss, than rigorous, yet his manner of coming was by the Sword, and that occasioneth Men much to debate about his absolute power in the Militia, as supposing that what power he had, other Kings may, *De jure*, challenge the same: and let that be taken for granted, though it will not necessarily follow in true reasoning: And let it also be taken for good, that *Henry* the Fourth, entred the Throne by his Sword, yet is there not any Monument in Story or Antiquity, that favoureth any absolute right in him over the Militia, but the current is, I think, somewhat clear against it.

First, Because *Henry* the Fourth, *De jure*, could not compel Men to serve beyond the Seas; but raised them by contract, and therefore by Act of Parliament, he did confirm the Statute, 1 Ed. 3. Stat. 2. cap. 5. which Statute was purposely made to that end: And the same also is countenanced by another Statute made in these times, whereof we now Treat; by the words whereof appeareth, that the Soldiers for the Foreign Service were letyed by Contract; between them and the Captain, who undertook to Levy them by wage; so as none were then compelled to enter into Service by impress, or absolute command; nor is there any Authority

7 H. 4. Fitz-  
herb. Prot. &c.  
100.

Authority amongst all those cited in *Calvin's Case*, that doth mention any such thing; but contrarily, that Opinion of *Thirning* is exprefs, That the King cannot send Men beyond Seas to Wars, without wages; and therefore no man is bound to any such service, by any absolute Legiance, as the Reporter would understand the point; but if he receiveth wages thereto, he by that Contract binds himself.

Secondly, It seemeth also to be granted, that such as went voluntarily in the King's service, ever had the King's pay, after they were out of their Counties, if the King ruled by his Laws, for by the Statute formerly mentioned, the King did likewise confirm the Statute of 18 Ed. 3. Stat. 2. cap. 7. which is exprefs in that point, and the matter in Fact also is evident upon the Records.

4 H. 4.

Thirdly, Touching the Arming of those that were thus Levied, as their was a certain Law, by which all Men were Assessed to certain Arms, either by the Service and Tenure of their Lands, or by Parliament; for such as were not bound to find sufficient Arms by their Tenure, according as is contained in the Statute, 25 Ed. 3. Stat. 5. cap. 8. So did *Henry* the Fourth, by the Statute formerly mentioned to be made in his time, confirm that Law of *Edward* the Third. In the Argument of *Calvin's Case*, it is much insisted upon, to prove the Legiance of an English-man to the King, to be absolute, because he hath power to send Men to War at his pleasure, and he hath only power to make War; and if so, then hath he absolute power in the Militia: As touching the power of sending Men to War, hath been already spoken; but as touching the power to make War, there is no doubt, but where a King hath made a League with another King, he only can break that League, and so make War; and that Opinion of *Brian* must be agreed for good in that sense. But if a League be made by Act of Parliament, or if the King will have War, and the Parliament will make a League without him; no Authority doth in such case avouch, that it is the right of the King, or that he hath a Legal power to break that League as he pleaseth: Neither in the

19 E. 4. f. 6.

the next place, hath the King any right or Legal power to make War with his own Subjects as he pleaseth, but is bound to maintain the Peace, not only by his Oath at his Coronation, but also by the Laws whereto he is bound, if he will reign in right of an English King: For every Man knoweth, that the grounds of the Statutes of wearing of Liveries, was for the maintaining of the Publick Peace. And Henry the Fourth, amongst other provisions made against that trick, hath this; <sup>1 H. 4. c. 7.</sup> *That the King shall give only his Honourable Livery to his Lords Temporal whom shall please him, and to his Knights and Esquires menial, and to his Knights and Esquires which be of his retinue, and take of him their yearly Fee for Term of Life, and that no Yeoman shall take or wear any Livery of the King, nor of none other Lord.* And another Law was made within one year ensuing, confirming the former, and providing, the Prince <sup>2 H. 4. c. 23.</sup> may give Liveries to such Lords as he pleases, and to his menial Gentlemen, and that they may wear the same as in the King's Case. By both which, the King and Prince are both in one Case, as touching the power of giving Liveries, if the one hath absolute power, then hath the other the like; If one be under the Directory of Law in that point, then is also the other: For it is clear, that the King is intended by the Statute to be bound from giving Liveries; and the people from wearing them, otherwise than in especial Cases; and then the Conclusion will be, that if the King may not give Liveries to prejudice of the peace, then may he much less break the peace at his pleasure; or levy Men, Arms, and War when he shall think most meet. Take then away from the King absolute power to compel Men to take up Arms, otherwise then in case of Foreign Invasion; power to compel Men to go out of their Counties to War; power to charge Men for maintenance of the Wars, power to make them find Arms at his pleasure; and lastly, power to break the peace, or do ought that may tend thereto: Certainly the power of the Militia that remaineth, though never so surely settled in the King's hand, can never bite this Nation.

Nor can the noise of the Commission of Array, entitle the King unto any such vast power, as is pretended: For though it be granted, that the Commission of Array was amended by the Parliament in these times; and Secondly, that being so amended, it was to serve for a Precedent or Rule for the future; yet will it not follow, that *Henry* the Fourth had, or any Successour of his, hath any power of Array originally from themselves, absolutely in themselves, or determinatively to such ends as he, or they, shall think meet.

First, As touching the amendment of the Commission, it was done upon complaint made by the Commons as a grievance, that such Commissions had issued forth, as had been grievous, hurtful, and dangerous: And the King agrees to the amendments, upon advice had with the Lords, and Judges: and if it be true that the amendments were in the material clauses (-as it is granted) then it seemeth that formerly a greater power was exercised than by Law ought to have been; and then hath not the King an absolute power of Array, for the just power of a King, can be no grievance to the Subject.

*Exam. Collec.*  
p. 406.

Secondly, If the Commission of Array thus mended, was to serve as a rule of Array for the future, then there is a rule, beyond which, *Henry* the Fourth, and his Successors may not go; and then it will also follow, that the power of Array, is not Originally, nor absolutely, in the King; but from, and under the Rule and Law of the Parliament: which rule was not made by the Kings own directions, but (as we are told) beyond expectation, alterations were made in material parts of the Commission, and the powers in execution there, whereof no complaint of grievance had been made. The issue then is, if, the King had an Universal power in the Array: the Parliament likewise had a general Liberty, without any restriction to correct that power.

*P.* 407.

*Ibid.* fol. 406.

Lastly, Suppose that this power of the Parliament is executed, and concluded, by the Commission thus amended, and that thereby the King's Power is established, yet can it not be

concluded, that this power is Originally or absolutely in the King: It's not absolutely in him, because it is limited in these particulars.

First, It's not continual, because it's only in case of eminent danger.

Secondly, It's not general upon all occasions, but only in case of a Foreign and sudden invasion and attempts.

Thirdly, the powers are not undefined, but circumscribed.

1. To Array such as are Armed, so as they cannot affect Arms upon such. 2. To compel those of able Bodies and Estates to be Armed, and those of able Estates, and not able Bodies, to Arm such as are of able Bodies, and not Estates: but this must be *juxta facultates*, and *salvo Statu*. 3. Whereas they strain themselves to make the Statute of Henry the Fourth, and the Commission of Array, to consist with the Statutes of 13 E. 1. 1 E. 3. and 25 E. 3. thereby they affirm so many more restrictions unto this power of Array, as those Statutes are remedial in particular cases; yet do I not agree to their Glosses, but leave them to the debate already published concerning the same.

Collect. 4. 24

Secondly, As this power was not absolutely in the King, so was it not originally from themselves, because they had not the Legislative power concerning the same; but the same was ever, and yet is, in the Parliament; hereof I shall note only three particular instances.

First, the Militia is a posture, that extendeth as well to Sea, as Land: That which concerneth the Sea, is the Law of *Marque*, and Reprisal, granted to such of the people of this Nation, at are pillaged by Sea, by such as have the King's Conduct, or publick Truce. And by this Law, the party pillaged, had power to recompence himself upon that Man that had pillaged him, or upon any other Subject of that Nation, in case upon request made of the Magistrate in that Nation, satisfaction be not given him for his wrong, it was a Law made by the Parliament, whereby the Chancellour had power to grant such Letters or Commission, upon complaint to him made.

4 H. 5. c. 7.

Mag. Charta.  
cap. 32.

This was grounded upon the Statute of *Magna Charta*, concerning Free Trade, which had been prejudiced by the rigour of the Conservators of the Truce, against the King's Subjects, although what was by them done was done, in their own defence : And by which means the Foraigners were become bold to transgress, and the English fearful in their own Charge, and many laid aside their Trade by Sea, and thereby the strength of the Kingdom was much impaired : Nor is the equity of this Law to be questioned, for if the Magistrate upon complaint made, grants not relief, the offence becomes publick, and the Nation chargeable, in nature of an Accessory after the Fact; and so the next Man liable to give satisfaction, and to seek for relief at home.

The King then hath a power to grant Letters of *Marque*, by Sea or Land, and this power is granted by Parliament, and this power is a limited power, only in particular cases, in regard that many times these prove in nature of the first, light skirmishes of a general War.

Two other instances yet remain, concerning the Order and Government of the Soldiers in the Army; the one concerning the Soldiers pay, *Viz. That Captains shall not abate the Soldiers Wages, but for their Cloathing, under peril of Fine to the King.* The other concerning the Soldiers service, *That they shall not depart from their Colours without leave, before the time of their Service be expired, unless in case of sickness, or other good cause, testified and allowed by the Captain; and such as shall do otherwise, shall suffer as Felons.* Which Laws could not have holden in force, had they not been made by Parliament, in respect that the penalties concern the Estates and Lives of Men, which are not to be invaded but by the Law of the Land : so as both Captains and Soldiers, as touching the Legislative power, are not under the King in his personal Capacity, but under the Law of the Parliament.

Lastly, As the rule of War was under the Legislative power of the Parliament, so was the rule of Peace; for whilst Henry the Sixth was in France, which was in his tenth year, from St. George's day, till February following: The Scots propound terms



terms of Peace to the Duke of *Glocester*, he being then *Custos Hsll.* 10 H. 6. *Regni*, which he referred to the Order of the Parliament, by whom it was determined, and the Peace concluded in the absence of the King, and was holden as good and effectual by both Kingdoms, as if the King had been personally present in his full capacity.

## CHAP. XXIII.

*Survey of the Reigns of Edward the Fourth, Edward the Fifth, and Richard the Third.*

**T**He Reign of *Henry the Sixth*, was for the most part, in the former parts of it, like fire buried up in the Ashes; and in the latter parts breaking out into a Flame: In the heat whereof, the Duke of *York*, after Fealty given by him to *Henry the Sixth*, and dispensation gotten from the Pope, to break his Faith, lost his life; and left his Son the *Mark* gave, to pursue his Title to the Crown, which he claimed by Inheritance, but more especially by Act of Parliament made upon the agreement between *Henry the Sixth*, and his Father. This was *Edward the Fourth*, who nevertheless reserved himself to the Election of the Lords, and was by them received, and commended to the Commons in the Field, by which means he gaining the possession, had no encouragement to maintain the same, yet never held himself a King of full Age, so long as *Henry the Sixth* lived, which was the one half of his Reign: Nor did he, though he held many Parliaments, scarce reach higher than at reformation of Trade, which was a Theam well pleasing to the people, next unto their Peace, which also the King carefully regarded. For although he had been a Soldier of good experience.

perience, and therewith successful, yet as one loath to trust too far, either the constancy of the people of his own opinion, or the fortune of War with his neighbouring Princes, he did much by brave countenance and discourse: and yet gain'd repute to the English for valour, after the dishonourable times of Henry the Sixth. He had much to do with a wife King of France, that knew how to lay out three or four calm words at any time to save the adventure of his peoples blood, and make a shew of Money to purchase the peaceable holding of that which was his, only by force, until the wind proved more fair to bring all that continent under one head.

Com. lib. 3.  
c. 4. & 5. & 6.

In his Government at home he met with many cross gales, occasioned principally by his own rashness, and neglect of the Earl of *Warwick*s approved friendship, which he had turned into professed enmity: And so weakned his own cause thereby, that he was once under Water, his Kingdom disposed of by new intail upon the Heirs of Duke *Clarence*, and so the Earl of *Warwick* remained constant to the House of *York*, though this particular King was set aside. Nor did he in all this, gain any thing but a Wife, who though his Subject, and none of the greatest Family, neither brought any interest unto he Lord and Husband amongst Foraign Princes, brought nevertheless a Pearl, which was beyond all; which was the purchase of the Union between the two Houses of *York* and *Lancaster*, and a peaceable succession in the Throne for a long while to come. It must be granted, that there fell therewith an unhappy inconvenience in the raising of a new Nobility of the Queens kindred, of whom the ancient stock of Nobility thought scorn, and yet they were so considerable as to be envied. A wound hard to be cured, and yet easily avoided, if such as know how to deny themselves. And therefore can be no prejudice unto that conclusion: That for an English King to marry his own Subject, is more safe for the King, and beneficial for the Kingdom, than to marry a Stranger.

But *Edward* the Fourth did not long lie underneath; upon the next fair Gale he comes from beyond the Sea, and (like his

his first Predecessor of the House of Lancaster) claims only his Dutchy, which no Man could in reason deny to be his right, and therefore were the sooner engaged with him in that account. This was an Act that in the first undertaking seemed modest, but when it was done, appeared too bold to adventure it upon the Censure of Henry the Sixth; and therefore they were not more ready to engage, than slack to disengage, till they were secure in the King's Interest, which not long after ensued, by the death of Henry the Sixth. Thus Edward the Fourth recovered the Crown to save his Dutchy. His Government was not suitable; for he came in by the people, but endeavoured to uphold himself by Foreign dependencies; as if he desired to spread his Roots, rather wide than deep; how ill this choice was, the event shewed; for plants that Root wide may be strong enough against an outward storm, but they soon grow old, barren, and rot irrecoverably from beneath: Such was the end of this Man's Government, himself lived and died a King, and left issue, both Male and Female, the one tasted the Government, the other kissed it, but neither of them ever enjoyed further than a bare Title. Nor was the Government of Edward the Fourth so secured by these engagements of Forainers, for as he sought to delude so he was deluded, both by Burgundy and Scotland, to the prejudice of all three. Towards his own people, his carriage was not so much by Law as by Leave; for he could fetch a course out of the old way of rule, satisfy himself, dissatisfy others; and yet never was called to account: What was done, by entreaty no Man could blame, and where entreaties are countenanced by Power, no Man durst contradict. Thanks to his Fate that had brought him upon a people tyred by wars, scared by his success, and loth to adventure much for the House of Lancaster, in which no courage was left to adventure for it self. The greatest error of his way was in the matter of Revenue; the former times had been unhappy in respect of good Husbandry; and Edward the Fourth was no Man to gather heaps: His occasions conducted rather to diffuse, and his mind generally led the way thereto, so as it's the less wonder

wonder if he called more for accommodations than the Ordinary Treasury of the Crown could supply: Hereto therefore he used expedients, which in his former times, were more moderate; for whilst *Henry* the Sixth lived, he did but borrow, by Privy Seal, and take Tunnage and Poundage by way of hire: Afterwards when no Star appeared (but what was enlightned from his own Sun) he was more plain, and tryed a new trick, called *Benevolence*: unwelcome it was, not only in regard of it's own nature, but much more in the end, for it was to serve the Duke of *Burgundy* in raising a War against *France* in the first view, but in the conclusion to serve his own purse, both from Friends and Foes: And yet this also passed without much control, for when displeasure was like to ensue, he could speak fair, and feast, and if need was, kiss away all discontent. Towards his end, as stale drink, he grew sour: For as in the first part of his Reign he had been supplied by good will against Law; so in his latter times, he had gotten a trick of supply by Law against good will: This was by penal Laws, which are a remedy if they be used, *Ad terrorem*, but if strained beyond that, the remedy proveth worse than the disease; in their first institution they are forms of courtesie from the people to the King, but in the rigorous execution of them, are trials of mastery of the King over the people, and are usually laid up against days of reckoning between the Prince and them.

Those penal Laws are best contrived, that with the greatest terrour to the Delinquent bring the least profit to the King's Coffers. Once for all, this King's A&Ts were many, his enterprizes more, but seldom attaining that end which they faced. He was a Man of War, and did more by his Fame than his Sword, was no sooner resolved in good earnest but he died, left a Kingdom unassured, his Children young, and many Friends in shew, but in truth very few.

Edm. 5. }  
Rich. 3. }

Now if ever, was the Kingdom in a trance, *Edward* the Fourth left a Son, the *Prima materia*; of a King, and who lived long enough to be enrolled amongst English Kings, yet served,

served the place no further, than to be an occasion to fill up the measure of the wickedness of the Duke of *Glocester*, and a monument of God's displeasure against the House of *Edward* the Fourth; whether for that breach of oath, or treachery against *Henry* the Sixth, or for what other cause, I cannot tell. But at the best this Prince was, in relation to his Uncle the Duke of *Glocester*, little other than as an Overseer to an Executor, that might see and complain but cannot amend: For the Duke ruled, over-ruled, and mis-ruled all under the name of *Edw.* the Fifth, and left no monument of good Government upon Record, till he changed both the Name and Person of *Edward* the Fifth to *Richard* the Third; his Fame had lifted him up, and might have supported him had he regarded it. But as no Man had more honour before he ascended the Throne, so no Man ever entred and sat thereon with less; his proceedings were from a Protector to an Usurper, and thence to a Tyrant, a scourge to the whole Nation, especially the Nobility; and lastly, an instrument of God's Revenge upon himself, a Man made up of Clay and Blood, living not loved, and dying unlamented. The manner of his Government was strained, having once won the saddle, he is loth to be cast; knowing himself guilty all over, and that nothing could absolve his Fame but a Parliament, he calls it, Courts it, and where his Wit could not reach to Apologize, he makes whole by recompence, takes away benevolences; he is ready to let them have their present desires, what can they have more: He promiseth good behaviour for the future, which he might the better do, because he had already attained his ends: Thus in one Parliament (for he could hold no more) he gave such content, as even to wonderment, he could as soon find an Army in the Field to fight for him, as the most meritorious of his Predecessors. His ill Title made him very jealous, and thereby taught his best Friends, to keep at a distance, after which time few escaped that came within his reach, and so he served God's Judgement against his adjutants, though he understood it not. Amongst the rest, the Duke of *Buckingham* (his great Associate, both in the Butchery of the two young Princes, and usurpation of

*Ercat. de Gal.  
lar. Imper.  
lib. 3.*

*Rich. 3. c. 2.*

the Royal Scepter ; ) he lived till he had laid the Foundation of better times in the person of *Henry* the Seventh, and then received his reward : But an ill Conscience must be continually fed, or it will eat up its own womb.

The King's mind being delivered from fear of the Sons of *Edward* the Fourth, now dead, torments himself with thoughts of his Daughter alive ; ashamed he is of Butchery of a Girl, he chooseth a conceit of Bastardizing the Children of *Elizabeth Gray*, that calleth her self Queen of *England* ; but this proved too hard to concoct ; soon after that, he goes a contrary way : The Lady *Elizabeth Gray* is now undoubted Wife of *Edward* the Fourth, and her eldest Daughter, as undoubted Heir to the Crown. And so the King will now be contented to adventure himself into an incestuous Marriage with her, if his own Queen were not in the way, only to secure the Peace of the Kingdom ; which, he good King, was bound in Conscience to maintain, though with the peril of his own Soul ; and in this zeal of his Conscience, his Queen soon went out of the way, and so Love is made to the young Lady. But *Henry* Earl of *Richmond* was there before, and the Lady warily declined the choice, till the golden Apple was won, which was not long after accomplished ; the King losing both the Lady, his Crown, and own life together, put an end to much wickedness, and had the end thereof in *Bosworth-Field*.

## CHAP. XXIV.

### *Of the Government in Relation to the Parliament.*

THE seasons now in Tract were of short continuance, lives passed away more speedily than years; and it may seem usefess to enquire what is the nature of the Government in such a time, when as the greatest work was to maintain life and soul together; and when all is done, little else is done. For though the Title of the House of *York* was never so clear against that of *Lancaster*; yet it had been so long darkned with a continual Succession of Kings of the Red Rose, that either by their merit had gained a Throne in the peoples hearts, or by their Facility had yielded their Throne up to the peoples will; as it proved not easie to Convince them that liked well their present Lot, and were doubtful of change, or to make them tender of the right of *Edward* the Fourth above their own quiet. Above threecore years now had *England* made Trial of the Government of the *Lancastrian* Princes, and thereof about thirty years experience had they of *Henry* the Sixth; they saw he was a gentle Prince. On the other side, *Edward* the Fourth, newly sprung up out of a Root, watered with blood; himself also a Man for the Field.

This might well put the minds of the people to a stand, what to think of this Man, whose Nature and ends are so doubtful, and brought nothing to commend him to the good wills of the people, but his bare Title; which the common sort usually judge of, according as they see it prosper more or less. Add hereunto that Divine Providence did not so clearly, nor suddenly, determine his secret purpose concerning this change, by any constant success to either part, by means whereof the one half of *Edward* the Fourth's Reign was spent, while as yet *Henry* the Sixth was in view, and the

minds of Men left unassured, neither trusting much to *Edward* the Fourth, nor he to them: and after that *Henry* the Sixth was gone out of the way, *Edward* the Fourth, could not readily change his posture, used Arguments of force and power, and for the most part, looked like a Man in Arms, with his hand on his sword, ready to draw upon the next Man that stands in his way.

2 E. 4. n. 30.

Thus are the people partly driven, and partly drawn, into an Oath of Allegiance unto *Edward* the Fourth, under peril of Attainder; and the Parliament assured unto him once more: For immediately upon the departure of *Edward* the Fourth beyond Sea, after ten years of his Reign, the Parliament (never staying for the issue of Providence) declared the Throne void of *Edward* the Fourth, and *Henry* the Sixth King. The Judges likewise of the Courts of *Westminster* determined the same thing, as may appear by the Law Reports of those times in Print: wherein Re-attachments were often granted by them upon discontinuance of process by this Demise of *Edward* the Fourth. And thus *Henry* the Sixth is once more King for six months, *Viz.* from *October* to *April*, at which time the balance turns, *Edward* the Fourth returns, gets into the Throne; *Henry* the Sixth is again Dethroned, all things are as they were, and all confirmed by Act of Parliament. For that Body is ever wise enough to side with power, rather than to spend much time upon fruitless Orders and Votes, that will pierce no Armour; and therefore like the times, must needs be subject to fits of distemper at the coming in of every Tide, and did build, and pull down, Enact, and disenact, turn and return, the English Crown, from *York* to *Lancaster*, and back again, and in conclusion, for some time did do little but undo. Nor can they be justly censured herein; for Councils of Men are not ordained to hinder Divine Providence, or over-rule Fate, but to fore-see, and close with occasions, in the most advantageous way for the publick good, and when both Winds and Currents are uncertain, to ride at stote, till they can discern the most commodious Haven to Winter in. To impute there-



therefore fault unto the Parliament in such Cases for want of Uniformity, and Immutability of Councils, is somewhat like the Notion that Batchellors conceit of Wives, they would have, but they do not know what other, than an *Idea of their own Fancy*.

Now if it be enquired which course prevailed, in order either to the King's Royalty, or the peoples Liberty, I shall answer neither of these, but the House of *York* prevailed to hold the Crown, and might have advanced the Authority thereof, had they not fall'n out amongst themselves for the spoil; and *Edward* the Fourth was not altogether disposed thereto: The success that he had in the Field, and his Soldiery, made him look big like a King of the greater size; but Kings sleep not securely upon such pillows; when the Militia is on Horse back, it is as ready to be a Guard upon the King, as for him, and when it is most sober, not so easily governed as a Common-Wealth. And therefore *Edward* the Fourth, now in Arms, though he found it a hard Notion to maintain the peoples Liberty, where no Man is free from the Soldier, yet he enclined thereto: we read of a multitude of taxations of all sorts, and of benevolences, the worst of all those sorts: for Soldiers must have money; or if not, they will have it, but the King would not force things so far as his power could reach, he will have money, but it shall be by Order of the Parliament. He might have pretended much upon the Commission of Array, yet did it not, but chose rather to be Lord of the Seas: and because it was too great a Farm for his private purse, he prays aid of the Parliament by the way of Tunnage and Poundage, which was in demand nine years, before the Parliament granted it; and when it was granted, it was with such restrictions, that it is evident the King preferred the right of the Parliament therein, above his private Honour.

12 E. 4. n. 8.

12 E. 4. c. 30.

Secondly, Titles of Honour are but windy Notions, and every one knows what claim is made by Kings, to have the sole interest in conferring the same; this *Edward* the Fourth neglected so far, as he interested the Parliament; both

17 E. 4. n. 10.

in

in the conferring of them, and refuming the fame.

Thirdly, The course of Trade was now more especially looked to, not by the King and Privy Council, but by the Parliament; and because it was much decayed, partly by reason of the ill Government thereof, and partly by the excessive lavishness of these times, many Laws are made for remedy of both. And first, the Staple was settled sometimes at *Calis* alone, sometimes at it, and *Middleborough*, and by this means England gained Trade from both Nations; but the principal thanks is to be given to the interest between the King and the House of *Burgundy*. Then course is taken for the bringing of the Staple Commodities only to those places, and the return to be made in Money, and not commodity by exchange. Then for the well making of Staple Manufactures, and restraining Importation of Foreign Manufactures of such kinds. Then against transporting of English Coyn, and Importing of Foreign Coyn, other then Bullion.

And as touching the second grievance, it seems, gallantry or vanity of Apparel, was a sore disease of these times, which were become times of Fashions, and wherein the King led the way by his own example; for he desired to be brave, and that he might be more brave, he passed Laws that the people should be less brave, assessing a sort of Apparel for every degree, and therein stooped so low, as to define the fashions of their very shoes.

Fourthly, the Parliament retained their ancient right of reducing the course of Judicature; for whereas Sheriffs had hitherto holden their course of Trial of the meaner sort of Felonies, and Trespasses, and Offences, determinable only by Imprisonment, or Fines and Amerciaments; whereby Mens Estates did lie under the continual pillage of these covetous and extorting Officers: It was established by the Parliament, that these Men should have for the future, only power of enquiry, and to certify at the next Sessions, and there the Trial to be, and Fines and Amerciaments to be set, Taxed, and Estreated, unto the Exchequer, and from thence to be levied, and thereof the Sheriff to give account; this was a great security to the peoples

peoples estates, but gave them not a full remedy: for though the Trial was now more fair, yet these Officers were Judges of suspicion, and had still power upon suspicion to imprison their persons, and seize their Estates, under colour to save them for the King, in case Conviction followed.

For remedy hereof, the Justices of the Peace have now <sup>1 R. 3. c. 3.</sup> power given them to Bail, in Cases of light suspicion, and it is further declared, that no Man's Estate shall be first seized, till Conviction and Attainder first be had. And because Escheators grew no less burthen some in their way; it was therefore Ordered, that no Man shall be allowed in such Office, unless he hath Lands to the value of twenty pounds *per annum*, and that he shall be responsible for such wrong done by himself, or by <sup>12 E. 4. c. 9.</sup> his Deputy and Farmer.

Thus *Edward* the Fourth quitted himself like a King in many regards, but soon ran himself out of breath, gave his Lamp to his Son, that was too weak to hold it; a Third snatches it away, and for two years carrying it exceeding well, yielded up all encroached Royalty to the people, and his Crown and <sup>1 R. 3. c. 2.</sup> Life to his Successor.

## CHA P. XXV.

### *The Condition of the Clergy.*

**I**F any gains were had in these uncertain times, the Churchmen might seem to have them, having now this advantage, that the Commonalty was distracted with uncertain Interests of the Succession of the Crown: And themselves only united under the Popedom, now freed from all Schism: and the Popedom managed by *Sixtus* the Fourth, who had the hap to be accounted more virtuous, than any of his Predecessors had been, and to have all the Christian Princes wholly at his De- <sup>Naucler.</sup> votion.

And

And lastly, Both the Clergy, and the Kings were now jointly engaged against the rising power of Religion, then called Heretic, in order whereunto, the Clergy leading the way, had the applause of them that followed upon an implicate Faith, that whatsoever was done, was exceeding well done.

Nor was it wisdom for Kings that fate loose in their Thrones to stumble the good Opinions of so considerable a party towards them. And therefore Edward the Fourth, in his first entrance, granted to the Clergy, that which could never be by them obtained from any of the foregoing Kings, *Viz.* Free liberty of Process in all Cases Ecclesiastical, and in Tythes of Wood above twenty years growth; and in Case they were troubled upon the Statutes of Provisors, they should have their remedy in the Chancery, against those Judges, and their proceedings in such Cases there to be Cancelled. This was done by Charter, and was sufficient to shew what the desire of the Clergy, and the intention of the King was, *Viz.* At once to favour the Church, and under colour of favour done to the Clergy, to cancel both Common and Statute-Laws of the Kingdom, by the power of the Chancellor's Decree; nevertheless, all this was but the King's breath, the policy changed never a whit the more. For the common Law held on its course, not only in Cases depending before the Holy Chair, but also even before the Bishop of the Diocese at home; so as neither the King was concluded from his Suit, nor the party endamaged from his Action by any such Charter. And so far was the Judges of the Common Law from being bound by the Chancery in such Cases, that they professed they would not delay to grant the *Habeas Corpus*, to deliver any Prisoner by Decree of the Chancellour, in any Case Triable at the Common Law: Much less did the Parliament favour these Men so far, as to give them any countenance in any way of gain upon themselves, but rather made bold with what the Church-men in former times challenged as their own, and upon this Account, whereas formerly it had inhibited Fairs and Markets upon the Lord's Day: Now it inhibited the sale of Boots, Shoes, &c. upon that day, though done never so privately, which they did at the first, only within the City of London

*Antiq. Brit.*  
294.

9 H. 6. fol. 56.  
*Per Paston.*

5 E. 4. fol. 6.  
9 E. 4. fol. 3.  
7 E. 4. fol. 2.  
*Per Littleton.*

23 E. 4 fol. 37

*London*, and three miles thereof. I suppose it was made only by way of Trial, it being dangerous in such times to give a stop to all *England* at once, otherwise it might be wondred, why God's Honour should be better regarded in *London*, than all the Realm besides: Of this encroachment we find no complaint made by the Church-men; another touched them to the quick, although it beset only the Arch-Bishoprick of *York*. Hitherto that so held ordinary Jurisdiction over all the Bishops of *Scotland*, as being their Provincial. Now it is disclaimed by them all, and they are backed therein by their King, under pretence of great inconvenience to his Bishops in their so far travels; but in truth, not unlike to *Jeroboam*, though he pretended 'it was too much for them, yet he thought it unsafe for himself, that his Bishops should owe Canonical obedience to the Subject of another Prince, and upon this ground prevailed with Pope *Sixtus* the Fourth, to make the Divorce, and left it to future Ages, to try the validity thereof, if they would.

This is all that I shall observe of the Government of these three Kings, whose Reigns in the whole, exceeded not twenty six years, and their compleat power therein, not much above half so many.



## CHAP. XXVI.

*A short sum of the Reigns of Henry the Seventh, and Henry the Eighth.*

**T**He course of English policy hitherto wandering in the different Currents, springing from the double head of Monarchy, and Democracy, and in them likewise often tossed up and down, partly by the blasts of windy Titles and Pretensions, and partly by the raging Tides from the Roman Sea, now begin to come to Anchor within view of Shore. Happy *England*, if the same prove good Harbourage for a fainting Nation. Two Kings now undertake the Steerage; the work of the first was to still the Winds, the other the Seas, and so to bring the Adventure safe home. *Henry the Seventh*, hapned upon a good preparative for this work, in that he delivered the Kingdom from a Tyrant, whose irregular and bloody way was so odious to the people, that it set a foil upon his Successor's Government, and made his Wisdom, Valour, and Justice appear greater than possibly it was. His Valour made way for the other two, he had enough thereof to serve a wise Man in case of extremity; at other times he made more use of his Majesty than Manhood; being confident that the people knew not where to mend themselves, but would be at his Devotion, so long as he was better than his Predecessor, though he cared not how little. His Wisdom was his greatest part, of which, upon all occasions he made the greatest improvement he could, without reflecting upon Conscience, or Religion, whereof he had tasted no more than would render him a civil Man, whereunto his Education did lead the way: thus, though his Valour brought him to the Crown, yet it was his Wisdom that settled

settled him in the Throne. For though he loved himself so well, that he was loth to pretend allowance of any accesse of Foreign help to his own atchievement in his Title, or that he was guilty in the least manner in his Entry upon the Throne; yet to keep danger far off, he provided one guard for his person, and many for his Title.

That of his Person he only pretended as a ceremony of State brought from the French Court, and yet it's strange that it went so well down with a Free people: For that Prince that will keep guards about his person in the midst of his own people, may as well double them into the pitch of an Army whensoever he pleases to be fearful; and so turn the Royal power of Law into force of Arms: but it was the French Fashion, and the King's good hope to have all taken in the best sense.

His Title (setting aside the saying of *Philip the Hardy*, That Kingdoms only belong to them that can get them) would hardly endure the touch, till Pope *Innocent* by his Bull, confirmed the Crown to him to hold by a six-fold right, *Viz. Of Inheritance, of War, of Esponsals, of Election, of gift by Parliament, and lastly, of Pontifical Benediction*; which the King liked marvellous well, and the rather because his Title by Marriage was buried up in the middle, and so made the less noise. For though it was his best guard, yet he liked not that it should be so reputed, least his Title should seem rather conferred upon him, than gained by him, and so should hold by a Woman, or at the best by the courtesie of *England*, if the peoples favour should so far extend the Law in that point, by both which he holds the honour of *a complete King diminished*: His Title by Inheritance is much disputable, if the right Heirs of *John of Gaunt* be enquired after: and much more that of War, for although that brought the Possession, yet no right or Title, but by wrong; which may indeed be plaitred over by Election, or Act of Parliament, but then he must be Tenant to the people. As touching the Pontifical Benediction, himself took that but as a redundancy, that might sway with the Clergy, and do his Title no hurt. Nevertheless, what se-

*Forius Brit.*

verally they cannot do, by joynt concurrence he accounts so fully done as if he were a King against all the World, and more, yet is he not sure enough, but as one jealous is more tender, so is his eye ever upon his Title ; there is his guard, and regard, as if it were the outworks of his Crown, which once lost, the Crown cannot hold out long. In this work he minded so much his greatness, that he lost the repute of his goodness, then casting his eye upon the Government and finding it of a mixt temper, wherein if Royalty prevails not, popularity will ; like a good Soldier whilst his strength is full, he sallies upon the peoples liberties, in regard of their persons with such cunning conveyance, as he taught the people to dance more often and better to the tune of Prerogative and Allegiance, than all his Predecessors had done ; nor did the people perceive it till they were over their shoes, and then they clearly saw their condition, and that it was in vain for them to wrangle with their own acts, of which more particularly in the next Chapter. The Legiance of persons of the people once gained, their Estates more easily follow, and therefore though in the former he wrought by *Ambuscado*, in this he may be more brave, and charge them in the Van ; yet this he did also by degrees, first by light Skirmishes of borrowing smaller sums of Money (possibly when he had no need) and paying them again, thereby to gain credit for greater sums, of which he intended not so sudden return. Then he charges them home with *Benevolences* (a trick gained in right of his Wife from her Father) for he hoped that the person of *Richard* the Third was now become so abominable as his Laws would be the less regarded. But in this course he gained nothing but Wind ; then (as *Edward* the Fourth) he falls upon *Moderations of penal Laws* ; things made, *in terrorem*, to scare Men to obedience, *Ad angorem*, and the people find that he is but a word and a blow with them, and thus serving his Prerogative with power, and his purse with his prerogative, he made all serve his own turn, *Humanitatem omnem vincente periculo*.

*Forius Brit.*  
fol. 9.



In the Field he always put his Wisdom in the Van, for as he was parcimonious in expences of Money, so much rather of Blood, if he could prevail by Wit; Generally he was the first in Arms, to make Men believe he was more ready to fight than they: Thus he many times gained the advantage of his adversaries, and sometimes came off without blows. In the Battel he did put on courage as he did his Armour, and would dare to adventure just as far as a General should, as if he had ever regard of his Crown, rather than of the honour of a forward Soldier, which nevertheless was also so dear to him as he is seldom found in the Rere, although his judgement commanded in cheif rather than his courage. In the Throne he is much more wise, because he was willing it should be known. In doing Justice he is seldom suspected, unless where himself is party, and yet then he is also so shamefaced, as he would ever either stalk behind some Law that had a semblance to his ends, or when he meant to step out of the way, he would put his Ministers before; not so much that his fineness might be known, but his Royalty. For the Lyon hunts not its own prey, nor is it regal for a King to be seen in catching of Money, though he be understood; besides it was needless, he had Lords, Bishops, Judges, and other instruments of malevolent aspects, as so many furies, outwardly resembling Men for the Commonwealth, but working for the common mischief; like some pictures one way looking right, and another looking wrong; and thus the King comes lawfully by what he caught, though his instruments did not, and must be still holden for a good King, though it be his hard hap to have ill servants. Take him now amongst the people he is alike to all, yea in some things that might seem to brush upon the King's own train; for he had some of his suit that were not altogether of his mind, and these he would spare to the course of Justice if need were; as it befel in the case of the Duke of *Suffolk*, whom he suffered to be tryed at the King's Bench bar, for a Murther done upon a mean person, and by such means obtained the repute of a Zealous Justiciar, as if Justice had been his principal vertue. All this suited well with his main end; for he that will milk his

his Cattel must feed them well ; and it encourages Men to gather and lay up, when they have Law to hold by what they have.

His Religion, I touch upon in the last place, as most proper to his temper, for it was the last in his thought, though many times the first in the acting ; but where it stood in his way he turned it behind him, he made Church-men his instruments, that the matter might better relish, for who will expect ought save well from Men of Religion, and then if the worst come, he was but misled by such, as in common reason ought to be trusted. And it is his unhappiness to meet with Clergy-men to serve a turn, and a Pope to give his Benediction to all. Nor was this *Gratis*, for there were as many mutual engagements between the Clergy and him, as any of his Predecessors of the House of *Lancaster* besides. Lastly, it may well be supposed how ever wise this King seemed to be, that many saw through him, which procured him a troublesome Reign ; though many times occasioned by his own interposing in Foreign Interests, wherein he suffered more from others, than they from him. Amongst the rest the Dutchess of *Burgundy* (though a Woman she were) mated him with Phantomes and Apparitions of dead bodies of the House of *York*, the scare whereof put the King and all his people in allarm, and striking at idle shadows slew one another. All which, together with the appearances of Collections, Taxes, and other accoutrements, to furnish such employments, were enough to disturb that ease and rest, that the King aimed to enjoy, make him burthensome to his people, and both himself and them weary of each other ; and so he went down to the grave with but a dry funeral, leaving no better testimony behind him, than that he was a cunning man rather than a wise English King : and though he died rich, yet is he since grown into debt to the Pen-men of his story, that by their own excellency have rendred him a better King than he was.

**H**ENRY the Eight was a conception, in whom the two *Henry 8.* Bloods of *Tork* and *Lancaster* did meet, both of them unconquered, both of them predominant; and therefore no wonder if he was a Man beyond the Ordinary proportion of other Men in stature of body, and in qualities of mind not disproportionable. It's regularly true, that great bodies move slowly, but it holds not where much spirit is, and it was the condition of this Prince to have a Spirit of the largest size that acted him into motion with no less speed than mighty power. This himself understood right well, and therefore might be haughty upon a double Title both of purchase and Inheritance; nor did he fail of expectation herein, for he could not endure that Man that would own his right in competition with the King's aims, and therefore would have his Kingdom be like his doublet to keep him warm, and yet sit loose about him, that he might have elbow room; suitable hereunto were his undertakings, invited thereunto by the inordinate motions, or rather commotions of his neighbouring Princes; for it was now full Sea in all Countries; and though *England* was inferior to some of them, yet the King held it dishonourable for him not to adventure as far as the bravest of them, and in the end outwent them all: What he wanted in number, he supplied in courage; wherein he so exceeded, that he avoided dangers, rather out of judgement than fear. His thoughts, resolutions, endeavours, and actions, were all the birth of occasion, and of each other; as if he had obtained a general pass from providence, with warranty against all Counter-guards whatsoever.

His Wisdom served him to espy present opportunities, rather than to foresee them, and therefore was not so crafty as his Father in preventing occasions, yet more dexterous in giving them the rout. For he could manage his hand and foot better than his Father, strike down-right blows, and rather than he would fail of his ends would make one, as many times he did.

Another advantage he had of his Father, for considering the times, he was a learned King, which made his Actions carry more Majesty, and like a well feathered Arrow from a strong hand, drive through the wind stedily to the mark, when as his Father like a weak Archer must raise his compass, and crave aid of the wind to help him to be right in the end.

It's affirmed by some, that *Henry* the Eight was courteous, and debonair, if so, he must thank his Education; but it may be rather supposed, that upon occasion he used the Art of Insinuation, which he might learn both from the Father-side, and Mother-side; but he neither practised it much, nor did he rely upon that skill, for his resolution led him to cut the knot that he could not untie. His Learning led him most to Divinity, and therein shewed him light enough to see much into the Mystery of iniquity, which he did explain to the World passing well; but as touching Devotion, he left that to the care of the Church-men.

He was very well accommodated with Money; First, from the full Coffers left by his Father, much whereof he spent in pastimes and gallantry, as he was Heir to *Edward* the Fourth; and much also in his Devotion to the Pope, as he was Heir to *Henry* the Seventh, in lieu of all which, he was rewarded with a Title, *Defender of the Faith*; and so much ill gotten, was much ill spent. But a better supply he had when *Rome* and he parted asunder, and the Current of the Riches of the Clergy was stopped from running at waste, and returned into the King's own Treasury, and so might have died the richest Prince in the World, but that he wanted the main Clause in the Conveyance, To have and to hold. The Wisdom of God so ordered it, for these felicities were too great and many, for any moderate spirit to bear gently, much more for the King's Spirit, that was ever on the Pinacle, and grown to that height, that like an embossed Stag, none must cope with him, he must run and out-run all; none must cross him under extrem peril, no good is to be done but by following afar off; nor is it a full wonder if in this his heat, he knows neither faith.

faithful Servant, Counsellor, nor Wife, but strikes at all that stands in his way. Nevertheless, in his cool temper, and when he was entangled with some perplexed occasion, he could use the advantage of good Counsel, and the wits of others that were more crafty than himself, wherein it was his good hap to have some ever nigh him that were for his turn, and unto them committed much, that himself might be at ease to hear good news of successful dispatches.

In his youth he was served by the wise Counsellors trained up by his Father, and he then willing enough for his pleasure, was contented by their advice to serve his people for a time, that they might be his Servants for ever. The two great Conduit Pipes of this Treasury, which he had from his Father, he cut off at his peoples request, as if he loved his people above all his riches; and after that, he laid aside his pleasures, and youthful company to apply himself more closely to the affairs of his Kingdom, as if he loved that above all pleasure: which nevertheless stuck to him so long as he lived, and swayed too much in the greatest Affairs of his Government.

Thus the first heat of his course was run well; so long as the Privy Council continued moderately poised: But no sooner began one of them to put up beyond his place, and to bid adieu to the advice of all the rest; but he gets the uppermost seat in the King's Head, makes a foot-stool of the King's Heart, and then it's two to one that the people in such cases must bear the greater burthen; for who ever first said it, he said most true, *That Prerogative in the hand of a King, is a Scepter of Gold, but in the hand of a Subject, it is a rod of Iron.* The reign of this King Henry the Eighth, serves us with much experience of this kind, for if the consideration of the Affairs of this Government should be divided, the same would be double: the one under the Regiment of Cardinal *Woolsey*, the other of the King, by *Cromwell*, *Craumer*, *Gardner*, and others interchangeably. I call that of *Woolsey* a Regiment, for he was in nature or condition of a *Pro-Rex*, during the King's Juvenility. This

Tbuan lib. 1.

Temporizer thus super-induced upon a Cardinal raised from mean Degree to be *Legate à Latere*, courted by Foreign Princes; flattered by the Emperour with Titles of Son and Cousin, made him lead a dance, that the King (however Active he was) is put to his Carere to hold him company; which the King perceiying, tripped up his heels, and left the Archbishop, the Chancellour, the Cardinal, the Legate, and many more with him, lying on the ground: *No Pride like to that of the Clergy, whose parts are more sublime, and apprehensions clear: If God addeth not a superiour work to rule over all, A little Honour will blow up all with a powder.* The King having thus matched the Cardinal, forgot his former natural pace, and once in a heat, could cool no more, till Death cooled him. He knew by experience, that the Cardinal could over-awe the people, why should not the King do as much, if the Lords stooped to the Cardinal, why not much rather to the King? The Cardinal pulled down, reared up, turned square to round, why should he be less than his Subjects? Such conceits as these soon wound up the King's mind to that height, that it's death to him to stoop one inch lower to more moderate advice; though he loved their persons never so well; but all must be content with the weight of his Arm, though it were no small one; and yet in point of Religion, Affairs tended to a kind of Reformation all this while.

## CHAP. XXVII.

*Of the State of the Crown.*

**T**Hat the Crown of England now abounded more in Flowers than Croffes, the Face of Story doth hold forth to ordinary Observation; and yet few are satisfied, either in the true nature of the particular advantages, or in

in the manner how they were obtained, or in the continuance. I must therefore make a little stop upon them, because in the true discerning of them, the discovery of the nature of the Government in latter days doth much depend. Hitherto the Crown came short of absolute power over the people, upon two grounds in observation; one relating to the Clergy, the other to the Laity.

The Church-men were heretofore under a Foreign power, and a Foreign Law, against which, Kings durst not deeply engage: either not being assured of their own Title, or employed in pursuit of other game, or being of a weak Spirit, were scared with the Thunder-bolt of the Pope's Curse: But the Laity were under another Law, and such an one, as by clear and unquestionable Custom, had established bounds, between the way of Kings, and the rights of the people: Neither did Kings directly invade those Borders, either led thereto by a kind of Conscience in such of them as were Morally enclined, or in others by a kind of fear of raising up Earth quakes from beneath, which commonly doth overthrow high Towers sooner than Winds from above. But now such interests are laid aside fast asleep, by two Kings: whereof one cared not much for fear, and neither of them for Conscience: For *Henry* the Seventh, having leisure to study the Nature, and contemplate the Fashion of the English Crown, dislikes the Model in some particulars: It was not rich enough, nor well poised to his mind, which ever was not to be poor, but towards his latter time to be exceeding rich; as supposing that to be the only way to be more desirable to Friends, formidable to Enemies, and absolute over his people. And this opinion of his missed in the main end, though it attained his immediate desire: for by mistaking the right way, it made a rich King, but not a rich Crown; he delighted more in the riches of his people, than in a rich people: and this bred no good blood, because the people thought that the Law was not on his side in that matter. They suffered him to visit their purses, but are loth it should prove Customary, lest they should lose their

common right, they therefore chose rather to give him power by Act of Parliament, to revoke Letters Patents, and Grants, and make resumptions of Offices, Fees, Annuities, and the like, that he might rather repossess his own, than possess theirs; many penal Laws likewise of a limited and Temporary regard are made; and as Cheese after a full dinner, they close up all with Subsidies; For it was evident to all Men, that the Royal mind of the King served no further than to take what was given; provided that the people would give what else would be taken. By this means *Henry* the Seventh left rich Coffers to descend to *Henry* the Eighth, but the Crown was still the same in price.

In this Act of the Play, the people carry away the plaudite: The second Act was the point of Allegiance, wherein both parts carry themselves so cunningly, as it's hard to adjudge the Garland, yet it may be thought, the King observed it rather, because he offered all the play, whilst the people did only lie at their close guard. The whole project consisted in this, to gain a more absolute Allegiance from the English to their King: and because this is exemplified partly in War, and partly in peace, that part which concerneth War, will more properly fall under the consideration of the Militia: and therefore I shall refer the same to that head in the 32. Chapter ensuing, and will come to the second consideration of Allegiance, in relation to Peace, and therein touch upon the Kings power in making of Laws, and of Judicature according to those Laws. As touching the making of Laws, the ingenuity of *Henry* the Seventh, could not suffer him to make any claim thereto in any positive way, yet his Actions declare that his heart was that way: For being beset with troubles, he could often fancy dangers, and Arm himself; then call a Parliament, who were wise enough to grant as readily as he asked, rather than to be compelled thereto: so he had Laws made according to his own will, though he made them not.

The matter of Judicature comes next, and therein he made his



his Judges appear, and not himself, though they did not only represent his person, but his mind; so things were done according to his mind, though he did them not: And thus his Excellency seemed more eminent in finding and making instruments fitting to do his work, than in doing his own work: Nevertheless, all this was but from hand to mouth; no fundamental Law is altered all this while; if the Laws were made by Parliament, the King made them not: if the Judges turned the Law to the King's ear, the Law was still the Crown, though the King wore it. But *Henry* the Eighth was no such Man, he had not this skill of undermining, nor desired it; he was tender of the least diminution of his Honour, industrious in finding out the occasion, and a most resolved Man to remove it out of the way, though it reached as high as the Tripple Crown; a Man underneath many passions, but above fear: What need he care for pretences, his Father loved Riches, he power, when he came to traverse his ground, he found quickly where the Church-men trespassed upon him, and began with them, resting upon the wisdom of his Father, and the Infallibility of the Pope. *Henry* the Eighth had taken to Wife *Katherine* his Brothers Dowager, and continued in that condition eighteen years without wrinkle of Fame, till the great success of *Charles* the Fifth, the Queens Brother, against the Pope and French, scared the King into a jealousy of his greatness, and the Emperour's failing in courtesie to Cardinal *Woolsey*, the King's Achates, stirred the Cardinals Spirit to revenge, for the loss of his hopes in the Popedom. For the Cardinal finding the King's mind to linger after another Bedfellow, by whom he might have a Son, he made the French Ambassadour his Instrument to mind the King of his unlawful marriage with the Queen, and to mention unto him *Margaret D'Allanson* a Princess of France, both in Blood and Beauty. *Thuan. lib. 1.* The King liked the Notion of Divorce, but disliked the motion concerning the French Lady, himself being prepossessed with a fair Object at Home, the Lady *Anne Bullen*, then attending upon the Queen; and thus being moved, entred into a scrutiny concerning the condition of his marriage, where-

wherein he had been formerly touched, both by the French and Spaniards themselves upon several motions made.

Fox.

Sleyden. lib. 9.

First, Between *Charles* the Fifth, and afterwards between the *Dauphine* and the Lady *Mary*, afterwards Queen; Here at the Cardinal winked all the while, till the infallibility of the Chair of *Rome* came upon the Stage; then bestirring his wits he lodged the Case upon Appeal thither, as he hoped beyond all further Appeal, and so held the King there fast, till himself might accomplish his own ends. But the wheel once set a running would not stay; the King espies the Cardinal in his way, and bears him down, then finding the fallacy of the infallible Chair, he hearkens after other Doctors, follows their light; and being loth to hear what he expected from *Rome*, he stopped the way to all Importation of such Merchandize, as might be any ways prejudicial to the Prerogative Royal, with the penalty of the loss of Land, or Liberty and Fine, the two latter being formerly warranted by Law: The first served as a scare, for (though it were but by Proclamation) Men might justly fear that he was so stout against the Pope, would not stick to scourge his own Subjects out of his way in the time of his heat.

The King thus entred the Lists, both against Pope and Cardinal, now under *Framuniri* (whereof he died) meets the English Clergy, (thus losing their Top gallant) standing up in the Rere against him, and talking at large. Nevertheless, the King stops not his Carere, puts them to the rout for maintaining the power Legatine. They soon submit, crave pardon, give a sum of money, and perfume their sacrifice with that sweet Incense of *Supreme Head of the Church of England*. This was done, not by way of Donation, (for the Convocation had no such power) but by way of acknowledgement in flat opposition to the Jurisdiction of the Pope: It became the common subject of discourse amongst all sorts, but of wonderment to the Pope: Yet for fear of worse, he speaks fair, for he was not in a posture to contest, but all would do no good; the Queen had appealed to *Rome*, the Pope by *Woolfsy's* advice makes delays: The Parliament espying the advantage; at

once

1531. An.  
Antiq Brit.Forius Brit.  
fol. 20.

Sleyden. lib. 9.

once took all Appeals to *Rome* away, and established all sentences made or to be made within this Land, notwithstanding any Act from *Rome*; and enjoyed the English Clergy to administer the several Acts of publick worship, notwithstanding any inhibition or excommunication from any Foreign pretended power: The grounds upon the preamble of the Law will appear to be two.

First, That the King of *England*, is Supreme Head in rendering Justice within the Nation in all causes therein arising, which is more than the Recognisance of the Clergy two years before this Act did hold forth, yet this acknowledgements is not absolute, but in opposition to Foreign pretensions.

Secondly, That the Clergy in *England* having power, may in matters Spiritual determine all doubts without Foreign help, and administer such duties as to their place do belong; not hereby determining that the Church-men ever had such power by Law, nor that they ought originally to have such power. They never had it, for no looner were they disjoyned from the Laity in these affairs, but immediately they were under the Pope, and received their power from him. And, *De jure*, they cannot challenge such power, but by a positive Law, such as this Law of *Henry* the Eighth, which also giveth but a restrictive and limited power, *Viz.* In matters Testamentary, of Divorce, Matrimony, Tythes, Oblations, and Obventions. So as if they will challenge such power, they must thank the Parliament for it, and use the same accordingly as persons deputed thereunto; and not in their own right, or right of their places. In all this the King's Supremacy is but obscurely asserted, and rather by implication, shewing what in reason may be holden, then by declaration of what was, making way thereby.

First, Into the opinions of Men before they were enjoined to determine their Actions, but within two years ensuing or thereabout, the Law is made positive,

*The King shall be taken and accepted the only Supreme Head on Earth.* 26 H. 8. c. 11.

*Earth of the Church of England ; and have power to visit, correct, repress, redress, reform, restrain, order, and amend, all such errors, heresies, abuses, offences, contempts, and enormities, as by any manner of Spiritual Authority, or Jurisdiction, ought or may lawfully be reformed.*

Which in the preamble is said to be made to confirm what the Clergy in their Convocation formerly had recognized. The corps of his Act is to secure the King's Title, the King's power, and the King's profit. As touching the King's Title it is said, that in right it did formerly belong to him, which is to be granted by all so far as the power is rightly understood. But as touching the King's profit it cannot be said that the whole lump thereof did belong to the King, because much thereof was not so ancient, but, *De novo*, raised by the Pope's extortion ; and therefore the true and real profits are by particular Acts of Parliaments ensuing in special words devolved upon him. The nature of this power is laid down in this Statute under a threefold expression.

First, It is a visitatory, or a reforming power which is executed by inquiry of offences against Laws established, and by executing such Laws.

Secondly, It is an ordinary Jurisdiction, for it is such as by any Spiritual Authority may be acted against irregularities, and thus the Title of Supreme Ordinary is confirmed.

Thirdly, It is such a power as must be regulated by Law, and in such manner as by any Spiritual Authority may lawfully be reformed. It is not therefore any absolute Arbitrary power ; for that belongs only to the Supreme Head in Heaven. Nor is it any legislative power, for so the Law should be the birth of this power, and his power could not then be regulated by the Law : nor could every Ordinary execute such a power, nor did Henry the Eighth ever make claim to any such power, though he loved to be much trusted.

Lastly,

Lastly, this Power was such a Power as was gained formerly from the King by foreign Usurpation, which must be intended, *De rebus licitis*, and once in possession of the Crown; or in right thereto belonging, according to the Law; for the King hath no Power thereby to confer Church-livings by Provisionship, or to carry the Keys, and turn the infallible Chair into an infallible Throne. In brief, this Power was such as the King hath in the Common-wealth; neither legislative, nor absolute in the executive, but in order to the Unity and Peace of the Kingdom. This was the right of the Crown which was ever claimed; but not enjoyed further than the English Scepter was able to match the Romish Keys: And now the same being restored by Act of Parliament, is also confirmed by an Oath <sup>28 H. 8. c. 10.</sup> enjoined to be taken by the People, binding them to acknowledge the King under God supreme head on earth of the Church of *England, Ireland*, and the King's Dominions, in opposition to <sup>35 H. 8. c. 1.</sup> all Foreign jurisdiction: <sup>35 H. 8. c. 5.</sup>

And Lastly, by a Law which bound all the People to maintain the King's Title of Defender of the Faith, and of the Church of *England and Ireland*, in earth the supreme head, under the peril of Treason, in every one that shall attempt to deprive the Crown of that Title.

We must descend to particulars; for by this it will appear that these general Laws concerning the King's refined Title, contained little more than matters of Notion, otherwise than a general barr to the Popes future interests: And therefore the Wisdom of the State (as if nothing had been already done) did by degrees parcel out by several Acts of Parliament the particular interests of the Popes usurped Authority in such manner as to them seemed best.

And first, concerning the Legislative Power in Church-government: It cannot be denied but the Pope, *De facto* had the Power of a negative vote in all Councils, and unto that had also a binding Power in making Laws, Decrees and Decretals out of his own breast; but this was gotten by plunder, he never had any right to headship of the Church, nor to any such Power in right of such preferment, nor was this given to the

King as head of the Church, but with such limitation and qualifications, that it's evident it never was in the Crown, or rightly belonging thereto.

25 H.8.c.19. First, nigh three years after this recognition by the Clergy in their Convocation, it is urged upon them, and they pass their promise, *In verbo sacerdotii*.

And lastly, it is confirmed by Act of Parliament, that they shall never make, publish, or execute any new Canon, or constitution provincial, or other, unless the King's Assent and License be first had thereto; and the offences against this Law made punishable by fine and imprisonment: So as the Clergy are now holden under a double bond, one the honour of their Priesthood which binds their Wills and Consciences; the other the Act of Parliament which binds their Powers, so as they now neither will nor can start. Nevertheless, there is nothing in this Law, nor in the future practice of this King, that doth either give or assert any power to the King and Convocation to bind or conclude the Clergy or the People, without an Act of Parliament concurring, and enforcing the same: And yet what is already done, is more than any of the Kings Predecessors ever had in their possession.

31 H.8.c.26. *A second Prerogative was a definitive power in point of doctrine and worship. For it is enacted, that all Determinations, Declarations, Decrees, Definitions, Resolutions and Ordinances according to God's word, and Christ's Gospel, by the King's advice and confirmation, by Letters-patent under the great Seal, at any time hereafter made, and published by the Arch-Bishops, Bishops and Doctors, now appointed by the King, or the whole Clergy of England, in matters of the Christian Faith, and lawful Rites and Ceremonies of the same shall be by the People fully believed and obeyed under penalties therein comprised: Provided that nothing be done contrary to the Laws and Statutes of this Realm.* A Law of a new birth, and not an old Law newly revived, or restored. This the present occasion, and the natural constitution of the Law do fully manifest: The occasion was the present perplexity of the People, for instead of the Statute, *Ex officio*, which was



now taken away, the six Articles commonly called the six stringed whip, were gotten into power by a more legal and effectual Original. The Parliament had heard the cries of the People concerning this, and having two things to eye at once; one to provide for the Peoples liberty, and further security against foreign pretentions; the other (which was more difficult) for the liberties of the consciences of multitudes of men of several opinions (which could not agree in one judgement, and by discord might make way for the Romish party to recover its first ground) and finding it impossible for them to hunt both games at once, partly because themselves were divided in opinion, and the bone once cast amongst them might put their own co-existence to the question, and partly because the work would be long, require much debate, and retard all other affairs of the Common-wealth, which were now both many and weighty. In this troubled wave, they therefore wisely determine to hold on their course in that work, which was most properly theirs, and lay before them: And as touching this matter concerning Doctrine, they agreed in that wherein they could agree, *viz.* To refer the matter to the King and Persons of skill in that mystery of Religion, to settle the same for the present, till the Parliament had better leisure, the People more light, and the minds of the People more perswaded of the way. Thus the Estates and Consciences of the People for the present must endure, *In deposito* of the King and other Persons; that a kind of *Interim* might be composed, and the Church for the present might enjoy a kind of twilight, rather than lye under continual darkness, and by waiting for the Sun rising, be in a better preparation thereunto. For the words of the Statute are, That all must be done without any partial respect or affection to the Papistical sort, or any other Sect or Sects whatsoever. Unto this agreement both parties were inclined by divers regards. For the Romanists, though having the possession, yet being doubtful of their strength to hold the same, if it came to the push of the Pike, in regard that the House of Commons wanted Faith, as the Bishop of Rochester was pleased to say, in the House of Lords; and that liberty

25 H. 8. c. 14.

31 H. 8. c. 14.

of conscience was then a pleasing Theme, as well as liberty of Estates, to all the People. These men might therefore trust the King with their interests, having had long experience of his Principles: And therefore as supreme Head, they held him most meet to have the care of this matter, for still this Title brings on the Van of all these Acts of Parliament. On the other side, that party that stood for Reformation, though they began to put up head, yet not assured of their own Power, and being so exceedingly oppressed with the six Articles, as they could not expect a worse condition, but in probability might find a better; they therefore also cast themselves upon the King, who had already been baited by the German Princes and Divines, and the out-cries of his own People, and possibly might entertain some prejudice, at length, at that manner of worship, that had its original from that Arch-enemy of his Head-ship of the Church of England. Nor did the the issue fall out altogether unsuitable to these expectations: For the King did somewhat to unsettle what was already done, and abated in some measure the flame and heat of the Statue, although nothing was established in the opposite thereto, but the whole rested much upon the disposition of a King subject to change.

As touching the constitution of this Law; that also shews that this was not derived from the ancient Right of the Crown now restored, but by the positive concession of the people in their representative, in regard it is not absolute, but qualified and limited diversly.

First, this power is given to this King, not to his Successors, for they are left out of the Act, so as they trusted not the King; but Henry the Eighth, and what they did was for his own sake.

Secondly, they trusted the King, but he must be advised by Council of men of skill.

Thirdly, they must not respect any Sect, or those of the Papistical sort.

Fourthly,



Fourthly, all must be according to God's Word, and Christ's Gospel.

And lastly, nothing must be done contrary to the Laws and Statutes of this Realm. And thus though they trusted much, yet not all, nor over-long. For it was but a temporary Law, and during the present condition of affairs. Nor did the King or People rest upon this Law, for within three years following, another Law is made to confirm what was then already done by the King; and a larger power granted to the King, to change and alter, as to his Wisdom shall <sup>34 G. 35 H. 8. cap. 1.</sup> seem convenient. Thus the King's injunctions already set forth were established, all opposal to them inhibited, and the King hath a power of Lawing, and Unlawing in Christ's Kingdom, and to stab an Act of Parliament in matters of highest concernment: And the reason is, the King will have it so, and who dares gain-say it, as *Cranmer* said, the King loves his Queen well, but his own opinion better; for new things meeting with new love, if it be once interrupted in the first heat, turns into a displeasure as hot as the first love, nor had either party great cause to boast in their gainings; for none of them all had any security, but such as kept close to a good conscience.

*Antiq. Brit.*

All this, though much more than any of his Predecessors ever attained, was nevertheless not enough till his Title was as compleat. The Pope had fashioned him one now above twenty years old, for his service done against *Luther*, and others of that way, and sent it to him as a Trophée of the Victory; this was *Defender of the Faith*, which the King then took kindly, but laid it up till he thought he had deserved it better; and therefore now he presents it to the Parliament, who by a Statute annexed it to the Crown of *England*, for <sup>35 H. 8. c. 3.</sup> ever now made triple by the Royallizing of that of *Ireland* amongst the rest.

A third Prerogative concerned the King's Power in temporal matters, and now must *England* look to it self, for never had English King the like advantage over his people as this man had. His Title out-faced all question: Left rich by his

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his Father, trained up in the highest way of Prerogative, absolute Lord of the English Clergy, and of their Interest in the People, of a vast spirit, able to match both the Emperour and French abroad, and yet more busie at home than all his Predecessors. A King that feared nothing but the falling of the Heavens; the People contrarily weary of Civil Wars enamored with the first tastes of Peace and Pleasures; while as yet it was but in the blushing child-hood, over-awed by a strange Giant, a King with a Pope in his belly; having the Temporal Sword in his hand, the Spiritual Sword at his command. Of a merciless savage nature, but a word and a blow; without regard even of his bosome companions, what can then the naked relation of a Subject do with such an one, if providence steps not in and stops not the Lions mouth, all will be soon swallowed up into the hungry maw of Prerogative. To set all on work comes *Steven Gardiner* from his Embassage to the Emperour, sad apprehensions are scattered, that the motions abroad are exceeding violent and sudden, that the Emperour and French King are fast in nothing, but in change according to occasion, that like the Eagle they make many points before they stoop to the prey. That if the motions at home do wait upon debates of Parliament, things must needs come short in execution, and the affairs of this Nation extremely suffer. A dangerous thing it is that the King should be at disadvantage, either with the Emperour or French King, for want of power in these cases of sudden exigences, and for some small time, during the juncture of these important affairs, that seeing likewise at home the point concerning Religion is coming to the Test, the minds of men are at a gaze; their affections and passions are on their tiptoes. It's reason the King should fear with a shorter Rudder, that this care might meet with every turn of providence, which otherwise might suddenly blow up the Peace, and good Government of this Nation. These and the like represented a fair face to that which followed, and made way for the King without shame to ask what no King before him suffered ever to enter into conceit,

I mean a Legislative power to this effect, That Proclamations made by the greater part of the King for the time being, and his Council, whose names hereafter follow, with such penalties, as by them shall be thought meet; shall be of equal force by an Act of Parliament, provided it shall not extend to the forfeiture of Estates or Priviledges; nor to loss of Life (but in cases particularly mentioned in the Law) provided no Proclamation shall cross any Statute, or lawful, or laudable Custom of this Realm: All which at length comes to be demanded by a formal Bill, with as ill favoured a Preface, as the matter it self, which was much worse ere it was well liked in the House of Commons, and when all was done, proved a Bare still: Whatever it was, it passed in manner above said, neither much to the desire of the Commons, that so much was given; nor to the good liking of the King, that there was no more: For in stead of a Legislative power, which he grasped at for himself, he received it in common with his Council; and so becomes ingaged neither to alter nor destroy that Brother-hood, if he intended to reap any fruit of this Law, leaving the point in doubt whether his gain or loss was the greater. For this Law, thus made for this King, these Counsellors, and these times and occasions, can be no precedent to the future, unless to inform Kings that the Parliament hath a power to give more Authority and Prerogative to Kings, than they or the Crown have by common Right, and to give it with such limitations, and qualifications, as seemeth good to them.

And secondly, that even *Henry* the Eighth acknowledged that the Legislative power was not in the Crown, nor was the Crown capable thereof, otherwise than it was conferred by the Parliament. Only *Steven Gardiner* might glory in this atchievement, having for the present obtained much of his ends by perswading the King that Foreign Princes estranged from him, not so much for his departure from the Pope, as for some apprehensions they had of his departure from that way of Religion and Worship, which they apprehend every Christian ought to maintain. And therefore if he

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meant to gain better correspondence amongst these Princes, he must engage more resolutely to the fundamentals of the Worship, though he shook of some sleighter ceremonies with the Romish Supremacy; for he knew that they were willing enough with the later, though the other could not go down with them; thus did foreign correspondence float above, when as the Church, as then it stood, was underneath, and gave the tincture to every wave. And it was holden more safe by the Romish party to trust the King (thus attempered) with the legislative power in the Church matters, than the rough Parliament, whose course steered quite wide from the Roman shore, as if they never meant to look that way any more, though *Craumer*, and the chief Officers of State, and of the Household, were by the Law Judges of the matter in fact, as well as the King, yet in the conclusion the King only was of the *Quorum*; all this yet further appears in the penalty, for by a Provisor it is moderated, as to all forfeitures of Life, Limb or Estate; and in the conclusion extended only to Fine and Imprisonment; unless in some cases mentioned, and excepting offences against Proclamations made by the King or his Successors, concerning Crimes of Heresie. For it is the first clause of any positive Law that ever intimated any power in the King of such cognisance and punishment of Heresie; too weak a principle it is to settle a Prerogative in the King, and his Successors, as Supreme Head of the Church, thus by a side wind to carry the keys of Life and Death at their girdle, and yet a better ground cannot I find for the Martyrdom of divers brave Christians in those times, than this touch of a Law glancing by: All which passing, *Sub silentio*; and the Parliament taking no notice thereof, made way for the Statute, 38 H. 8. c. 26. Formerly mentioned to come more boldly upon the Stage.

This was one wound to the legislative power of the Parliament thus to divide the same: Another ensues that in its consequences was no less fatal to that power which remained, and it was wrought by some Engine that well saw that

that the Disease, then so called, grew to be epidemical amongst the more considerable party in the Kingdom; that the Lady *Jane Seymor* (now Queen) was no friend to the Romanists; that she was now with child, which if a Son (as it proved to be) was like to be Successor in the Throne, and be of his Mothers Religion, and so undo all, as in the issue all came so to pass: To prevent this, nevertheless they fancy a new conceit, that Laws made by English Kings in their minority, are less considerably done, than being made in riper years. And so by that one opinion countenanced a worse, which was, that the Legislative power depended more upon the judgement of the King, than the debates, and results of the Parliament; a notion that would down exceeding well with Kings, especially with such an all-sufficient Prince as *Henry* the Eight conceived himself to be; upon this ground a Law is made to enable such of the King's Successors, by him appointed, as shall be under the age of twenty and four years, when Laws by him are made, to 28 H. 8. c. 17. adnuld the same by Letters-patents, after such Prince shall attain the said age of twenty four years. Thus the Arms of the Parliament are bound from settling any Reformation, let them intend it never so much; a Muse is left open for the Romish Religion still to get in, when the Season proves more fair. The Parliament was now in its minority, and gives occasion to the Reader to bewail the infirmities of the excellency of England.

A fourth advance of Prerogative concerned the executive Power in Government of the Church. This had formerly much rested in the Prelacy, and that upon the chief Prælatissimo at Rome; now there is found in England a Prelater then be; the Pope was already beheaded, and his head set upon the King's shoulders: To him it is given to nominate all Bishops; and Arch-Bishops within his Dominions, by long desire, 25 H. 8. c. 10. and that the party once elected shall swear fealty, and then shall be consecrated by Commission, and invested; but if upon the long desire, no Election be certified within twelve days, the King shall by Commission cause his own Clerk to be consecrated and Invested.

Rot. Pat.

17 Job.

35 E. 1. St.  
Carl.25 E. 3. De  
provis.

13 R. 2. c. 2.

Antiq. Brit.  
vit. Cranmer.

sted. The occasion that first brought in this President, was the access of *Cranmer* to the See at *Canterbury*; for though the Head-ship had been already by the space of two years translated from *Rome* to *England*; and yet the course of Episcopizing continued the same, as formerly it had been. I mean as touching the point of Election: For though in their Original, Bishops were merely Donatives from the Crown, being invested by delivery of the Ring and Pastoral Staff, and until King *John's* time, the Canonical way of Election was disallowed, yet King *John* by his Charter, *De communi consensu Baronum*, granted that they should be eligible, which also was confirmed by divers publick Acts of Parliament in after times; and now by this Law last recited, and with this way the King was contented for the space of six years, for the Reformation intended by the King, was not done at once, but by degrees; and therefore though this course of long desire was brought into use, yet the Parliament being of six years continuance, a necessary thing in times of so great change of policy, began this course of Election, by giving the King power to nominate, and allowing of the Pope power to grant to such his Bulls or Pall at his own will; otherwise they should be consecrated by Commission without his consent, and thus at the first, the Pope's concurrence was not excluded, though his Negative was. In this posture of Affairs comes *Cranmer* to be consecrated Arch-Bishop: And being nominated thereunto by the King, the wily Pope knowing the King's aim, meant not to withstand, lest he should lose all, but granted the Pall as readily as it was desired; so as *Cranmer* is thus far Arch-Bishop of *Canterbury*, without all exception; yet he must go one step farther, and take the old Oath to the Pope, which the King allowed him to do, *Pro more*, and which he did, *Renitente conscientia*, say some, and with a *Salvo*, say others, and all affirm it was done, *Perfunctorie*, like some worn Ceremony, or civil Complement. Nevertheless it was not so soon turned over; the Arch-Bishop loved not the Office, the King loved not Partnership in this matter; and it was evident to all that no man could serve these two Masters any longer, an agreement is soon concluded

cluded in Parliament to exclude the Pope's Power quite out of this game, *and all is left to be done by the King and his Commissioners, by the Law formerly propounded. In all this the Pope is loser, the English Clergy the savers, for the Pall cost Cranmer nine hundred marks.* And the Crown is the great gainer; for hereby the King got them sure to him, not only by their own acknowledgement and submission, but also by a Statute Law.

And lastly by Oath, which to make sure was treble twined, once upon their first submission in the King's twenty second year, when they had been under *Premunire*.

Secondly, soon after the decease of *Queen Katherine Dowager*, in the twenty sixth year, which Oath was more compleat than the former; containing,

First, a Renunciation of all Fealty to the Pope, or any Foreign Power.

Secondly, an obligation to adhere to the cause of the King and his Successors.

Thirdly, a disavowing of the Pope, otherwise then as another Bishop or fellow Brother.

Fourthly, an engagement to observe all Laws already established against the Pope's power.

Fifthly, a disavowing of all appeals to *Rome*.

Sixthly, an engagement to inform the King of all Messages or Bulls, sent from *Rome* into *England*.

Sevently, an engagement not to send, or be privy to the sending of any Message to *Rome* for any such purpose.

The third Oath was that of Fealty, which anciently was due to Kings, and now revived to be taken by all Bishops upon their admission. And thus the English Prelacy, having been sworn slaves to the Papacy ever since *Becket's* time, are now preferred to a more Royal Service, and the pursuit by Kings after their right, being laid aside by the space of 300 years, is now renewed, and the prey seized upon by the *Lyon*, who found it upon a better title, and in better condition

by much, than when at the first it was lost, for it was upon some semblance of Reason that the Arch-Bishop and Clergy gained it; but being afterwards dispossessed thereof by the Pope, and yet without any other shadow of Title, but the Power of his own gripe, for the present he is the occupant, and becomes Proprietor by prescription: Till now the felon apprehended, the stolen goods are the Kings in Right, and by Remitter, whereunto the Parliament were by the Statute adding their conveyance, establishes the same by an unquestionable Title; nevertheless their service is no less servile to this Crown, than it had been to the Romish Miter; formerly they asserted the Pope's Infallibility, now the King's Supremacy. They are now called by the King, made by the King, sent by the King, maintained by the King, whatsoever they are, whatsoever they have, all is the Kings: He makes Bishops, he makes new Bishopricks; and divides or compounds the old as he pleaseth, by a power given to *Henry* the Eighth by Parliament, which oath was never in any Prince before or after him, that I can find; so as the Crown had it not, but the man, and it died with him.

31 H. 8. c. 9.

The King thus loaden with Power and Honour, above all his Predecessors (if without proportionable maintenance to support the one, and act the other) must needs consume himself (as on in a Tympany) by growing great: For though he was left rich by his Father's Treasure, yet his Zeal to *Rome* in its now poor captived condition under the Imperial power, stirring up in him great undertakings abroad (besides his own pleasures and gallantry at home) exhausted that, and doubtless had starved these his grand designs, had he not found the hidden Treasures of the Cells and Monasteries; the sight whereof so roused up his Spirits, that he adventured upon the purchase, though he knew difficulties enough to have stopped his undertakings, if he had not resolved, both against fear and flattery. It was not done without deliberation; for the thing was felt as a grievance before the *Norman* times, and complained of in Parliament above a hundred and forty years ago, and divers times since, but



but Kings either understood not, or believed not, or durst not give remedy, or had much else to do. But now the King is beyond all his Predecessors, he knows much, dares do more, and is at leisure, he will go as far as Emperour or French King, and beyond them also, but would not try masteries with either, for they were all Cocks of the game.

The first occasion that discovered the work feasible, was a president made by Cardinal *Woolsey*, whose power was enough to dissolve some petty Cells, and no opposition made. The King might well expect the work would be as lawful for him, and not much more difficult, or if any storms ensued, the people that had so long complained, and felt the burthen of these excrecences of the Clergy, would soon find out a way to calm them; the King need do no more than speak, and the people will do. This opened the door, but that which brought the King in, was the hold the Pope had in this Kingdom by these cloystered people, who were persons dead in Law, and dead to all Law but the Canon; and upon this account the King's Ancestors had possessed themselves of the Cells, in the hands of Foraigners, in times of War, and now a deadly feud is stirred between *Henry* the Eighth and the Pope their holy Father; the Children cannot expect to thrive, when as their Father is cast out of doors; and so all must out together: yet the manner is observable, they must not be cast out, but must go out; the inferior and greater part are dead persons, have learnt obedience, they can neither bark nor bite, and therefore they may sleep, and what is done, must be done with such of them as are alive. Upon a Visitation, these are brought under the Test, and found in such a condition, that they had better give way, and voluntarily surrender, than abide the trial: Once more the smallest are picked out whiles the greater stand by and wonder, but either do not foresee, or (in despair of altering the King's resolution) do nothing but expect the sad hour, which within four years comes upon them all; every one of them chusing rather to surrender, and expect the King's mercy for maintenance during life, than adventure against the dint of

27 H. 8. c. 27.

31 H. 8. c. 13.

26 H.8. c.23.

of his Justice and Power, and so lose all ; for they were ill befriended amongst all sorts of the people. Thus came the personal Estate and Stock of these Houses to the Kings immediate Treasury, and their yearly maintenance to the disposing of the Crown, which might have advanced the same, well nigh to the value of two hundred thousand pounds yearly, but that the King intended to let the people enjoy the fat as well as he, that they might be mutually engaged to maintain hold of the prey that they had joyntly gotten. Out of all which nevertheless the Crown had a small rent, or service annual, for the acknowledgement of their tenure, besides the first fruits of Spiritual Dignities, and the Tenths, both which he formerly had already obtained.

Fox. Mart.  
fol. 322.

The first whereof was but casual , and occasional in the payment , arising only at the entrance of the party into his promotion ; and which was gained by the Pope from *Edward* the First, although at his Parliament at *Carleile*, in his thirty fourth year he withstood the same : This was above three hundred and twenty thousand pounds in the whole sum. The later was annual, and amounted to above thirty thousand pounds : And thus the Pope's Usurpations are turned into duties to the Crown, but were much lessened , in regard that these Cells and Monasteries were accounted amongst these Ecclesiastical promotions , which by their dissolution fell off in that account. Nevertheless, the advancement that might by a parcimonious King have been made of the fall of this Cedar, was such, that the Crown might have been rendred of it self absolute and all-sufficiert. But *Henry* the Eighth was not thus minded, the Affairs of *Europe* were gotten into a high pitch ; Princes generally over-Active ; *Henry* the Eight inferiour to none of them ; what comes in goes out, and he is a rare exemple of that divine Proverb ; *As Riches increase, so do the Mouths of them that eat ;* he still stands in need of his peoples love, purses and power ; so Divine providence orders the matter, that Kings can never attain further end of their undertakings without the aid of  
the

the people, than their labour, lest they should be too big to be Christians, and the people too mean.

## CHAP. XXVIII.

### *Of the Condition of the Parliament in these Times.*

**T**HEY are no good Expositors that consider their Text by piece-meal only, nor they good Historians, that will tell you the bare journal of Action, without the Series of occasion: such as these will speak much of the Actions of Henry the Eighth, what advancement he brought to the Crown, and make a compleat Monarchy, wherein the King may Act what he resolveth; resolve what he pleaseth; and please what he lusteth; when as in truth, the thing is nothing so: for though many of his Actions, in relation to particular persons, cannot be justified by any Law; so in truth, did they never proceed from any Law, but meerly from the passion or will of the man, and connivance of the people, who could bear that from this King, that their Ancestors would never endure under any other. And yet in all the Grand concerns of the Nation, the Law kept still upon the top, nor did the King enter into any Competition therewith, or lead the way thereunto, other then by especial allowance of the Parliament.

For first, it's evident, though the King was Supreme Head of the Church; yet this was not like the head of a mad man, led by phancy, without the Law of Reason, or Reason of Law; But it was defined, circumscribed, and formed thereby, with Qualifications and Limitations, as hath been already expressed in the former Chapter.

Secondly, it is no less clear that the Legislative Power rested in the Parliament, and not in the King, when he was in his greatest height; for as Head of the Church, he had no such

such power in Church-matters; or if he had such a right, it was taken away by the Acts of Parliament; nay, when the Pope was yet possessed of this Head-ship, the Parliament did determine the manner of the Worship of God, in some particular cases, as in the keeping of the Lord's Day, the Statute of *Edward* the Fourth, to the Honour of God did provide for the observing thereof; and to the Honour of God, it was taken away by a Statute in the time of *Henry* the Eighth, if the words of either Statute may be believed. But more especially, after that this Head-ship was translated to the King, the Parliament provided, that the Canons should be examined and allowed by the King, and thirty two persons, one part of the Clergy, the other of the Temporality, chosen by the King. And those that shall be assented unto, and confirmed by the King, and the thirty two persons, or the major part of them shall be obeyed, and put in execution, the residue shall be void: *Provided nothing shall be done against the King's Prerogative; or the Laws and Customs of this Realm*: So as the King had much, but he had not all; and what he had, the Parliament gave him by a Law, that was Executory all the days of *Henry* Eighth, by divers continuances, and was not any power devolved to the Crown, under the Title of Supremacy, nor by Vertue of the Act of Parliament concerning it, but by the continual influence from the Parliament upon the Crown, as well before that Act as after, derived upon it. The King hath then this right of Law-making, but it is with the thirty two he hath it, but not his Successors.

And lastly, he hath it but by a derivative power from the Parliament, and a Committee for that service: and in a word, he hath the Power, but the Parliament hath still the Law of that Power.

The second Privilege of the Parliament hitherto, concerneth only Laws concerning Church-Government. In the next place cometh to be considered the Legislative Power in point of Doctrine, which doubtless issueth from the same principle of Power with the former: For if the Church which

(which as a pillar and ground holdeth for the Truth) be the company of professing Believers ; then ought it not to seem strange, if these in their representative do intermeddle with this Power, or rather duty ; and for the matter in fact, neither did the King challenge this Power, nor did the Parliament make any difficulty of Conscience in executing the same, and yet there were many Learned and Consciencious men of that number.

They therefore, as touching the Doctrine, proceed in the same way, with that formerly mentioned concerning the Discipline : And a Committee also is by them made of the King and Learned men, to set down rules for Faith and Obedience, and for the order of the publick Worship of God, according to the Word of God ; and these Rules are confirmed by a Statute, so as the King hath a power in the point of Doctrine, but it is a derivative power, it is a limited power to himself, and not to his Successors, and to himself and others joyned with him. 32 H. 8. c. 16.

And lastly, nothing must be done contrary to the Laws of the Kingdom.

Secondly, the Parliament hath not only a right to grant and limit this power unto others, but also to execute the same immediately by its self ; and therefore before they granted this power to this Committee, whereas formerly the Pope usurped the power to be the *Omega* to the resolves of all Councils, the Parliament intercepted that to their own jurisdiction, in flat opposition to the Infallibility of the Roman Chair, so far as to Disherize some Opinions, which by the sentence of that infallible mouth, had been marked with that black brand of Heresie. And what they did before this Act of Delegation to the King, and other Committees for this work, they did afterwards, as not concluding their own power by any thing, that they had so done, as may appear by their Censure of the translation of the Bible, made by *Tindall* : By their establishing another translation : By their ordering and appointing what persons might read the same : By their qualifying the six Articles, and the like. The Parliament then hath a power which they may grant, and yet grant nothing away ; they may 34 H. 8. c. 1.  
35 H. 8. c. 5.

limit this power in others as they will, and yet not conclude themselves. And the King by accepting this limited power, must disclaim both the Original and absolute Right, and cannot claim the same by right of Headship or Supremacy. This was one great windfall which the Parliament had from the ruins of *Rome*, not by way of usurpation, but re-seizure, for their possession was ancient, and though they had been dispossessed, yet that possession was ever under a continual claim, and so the right was saved.

A second that was no less fatal unto that See; was the loss of all power over Ecclesiastical persons in this Kingdom: For whereas the Popedom had doubly rooted itself in this Nation, one way by the *Regulars*, the other by the *Seculars*; the Parliament by the dissolutions of Monasteries, &c. consumed one to ashes, and by breaking the fealty between the other and the Pope, parted the other root and the stock asunder, and thence ensued the down fall of this tall Cedar in this Nation; and Prelacy now left alone must fawn elsewhere, or lye along, a posture wherein that rank of men can never thrive: Up again they peep, and espying a King that loved to towre aloft, they suddenly catch hold, promising their help to maintain his flight, and so are carried up, and like a Cloud born between Heaven and Earth, making the Commons beholding to them for the King's Sunshine, and the King for their interests in the people, and for his superlative advancement above them all. Now though the English Prelates may think their Orb above the winds, yet were they herein deceived. The Parliament had power in their Election, before the Pope usurped that to himself; now that they are discharged, Kings are possessed of them by long desire, but it is not by way of restitution, for Kings were never absolutely possessed of any such power, but as Committees of Parliament, and by delegation and concession from them, and therefore must render an account to them, and abide their judgement when they are thereto called.

Thirdly, the Parliament had the disposing and ordering, of all the Church Revenues, as the Laws concerning Monasteries, Sanctuaries,

Sanctuaries, Mortuaries, First-Fruits, Tenths, Annates, and such like, sufficiently manifesteth.

Fourthly, the Parliament had the power of granting Licenses, Dispensations and Faculties, setting a rule thereunto, as in case of Non-residency, and delegating the power to Committees, whereof see more in the Chapter following concerning ordinary jurisdiction.

21 H. 8. c. 13.

25 H. 8. c. 16.

28 H. 8. c. 13.

Fifthly, the Parliament reserved the Cognizance of all appeals for final sentence unto themselves, and disposed of all the steps thereunto, as unto them seemed most convenient: For though it be true in some cases the Arch-Bishop of *Canterbury* had the definitive sentence, and in other Cases the Convocation, yet was this but by a temporary Law, and this also granted to them by the Parliament, which took it away from the Pope, and never interested the Crown therein, but made the Arch-Bishop, and the Convocation their immediate delegates so long as they saw good. Afterwards when they had done their work, viz. The determining the Appeal and Divorce of *Queen Katherine*, and some other matters, the same hand that gave that power took it away and gave it (not to the King or Crown) but to Delegates from the Parliament from time to time to be nominated by the King, and may as well alter the same, and settle the power elsewhere when they please. And therefore after the Appeal of the Dowager thus determined, and the sentence definitive, thus settled upon Delegates: The Parliament nevertheless determined the other causes of the Marriages of the Lady *Anne Bullen*, and the Lady *Anne of Cleve*, the jurisdiction of the Crown never intermeddling therein; so as upon the whole, it must be acknowledged, that however the King was Supreme Head of causes Ecclesiastical, yet had not the definitive sentence in Appeals, nor absolute Supremacy, but that the same was left to the Parliament.

24 H. 8. c. 12.

25 H. 8. c. 19.

Sixthly and lastly, what attempts the Parliament had met with, partly from the designs of some great men that sought their own ends, and partly from the endeavours of these Kings that sought their own height and greatness, above their peo-

ples good, hath been already related, and the utmost issue had been truly stated, *viz.* That the gains have come to the King's persons, and not to their Crown, and that therein they have put their Seal to the Law, and made their submission to the Parliament, as touching both their persons and power. Add hereunto, that however *Henry* the Eighth aimed much at himself in his ends, in two other main Interests that most highly concerned him, yet the chief gain came to the Parliament.

The one concerned his own Wife, which however so highly related to him, as next to his own person, and under the determination of the immediate Law of God, yet was so cast upon their sentence, as if he durst adventure his own Soul at their direction.

The other concerned the Crown, to which he ought relation above his own person, which he laid down at the feet of the Parliament, seeking to their power to fulfil his own pleasure: The Ball is tossed up and down, sometimes amongst the issue between the King and the Lady *Anne Bullen*, another while amongst the issue between him and the Lady *Jane Seymour*, or such as the King should nominate by Letters-patents or last Will. After that, to the Ladies *Mary* and *Elizabeth*, to perform conditions declared by the King's Letters-patents, or his last Will. The King then is trusted, but he hath his trust from the Parliament, the Crown is intailed, (as it hath been ever since *Richard* the Second's time) but it is done by Parliament: The Reversion is in the Clouds, but the right of Inheritance much more. The Conclusion of all is this, the Parliament by serving these Kings turns, turned their turns into their own.



## CHAP. XXIX.

### *Of the power of the Clergy, in their Convocation.*

**T**He Convocation of the Clergy, like some froward Children, loves not new dressing, though it be a gainer thereby. Before the Pope and *Henry the Eighth* were saine asunder, their masters, their minds, their work, all was double; their Councils uncertain, their Conclusions slow in Production, and sleight in their Fruit and Consequence; sometimes displeasing to the Pope, sometimes to the King, generally to themselves; who naturally lingering after their own interests, were compelled to feed that body that breathed in them, rather than that wherein themselves breathed; and so like hunted Squirrels, from bough to bough, were ever well tired, yet hardly escaped with their own skins in the conclusion. Now *Henry the Eighth* tenders them better conditions, both for ease and Honour, and more suitable to their own Interest; yet they are loath to accept, because they had been slaves by prescription.

Formerly, they were troubled with multiplicity of Summons, sometimes from the King, sometimes from the Pope, sometimes from the Metropolitan, and always over-dripped by a Foreign Power, that they could propound nothing for the good of the Souls of themselves or others, but must be blasted from without; their labours lost, their undertakings vain, and themselves, in the conclusion, sit down choaked in their consciences and desires. Now they are at no man's call, but the Kings, and that by *Writ*, both *Provincial*, and *Legate à Latere*, must meddle no more. 21 H. 8. c. 19.

Formerly, it's taken for granted, that Kings have no Vote in matters Ecclesiastical, though themselves be interested therein; and therefore if he will accept of a Disme, he must accept it, *Statu quo*, it is granted; nor can he interpose his Dissent, 21 E. 4. fol. 46.

25 H. 8. c. 19.

Instit. 4.  
fol. 323.

Dissent, nor do they much care for his consent: But whether the King be concerned or not concerned, what they conclude, they must maintain, *Vi & Clavibus*, although in right, his Pre-rogative is above theirs. Now by the Statute, the King's Vote is asserted, and a Negative Vote restored, and himself made as well Head of the Convocation, as the Church: nothing can pass there without his Concurrence, nor come to the consideration of the Parliament, without his pleasure; and thus the King hath a double Vote in every Church Ordinance: One, as in the Parliament, to pass the same as an Act of Parliament, of which I conceive the Opinion of the Honourable Judge is to be understood; the other, as a Member of the Convocation, to pass their advices to the Parliament; and therefore he might either sit in person amongst them, or by his Vicar, as *Henry* the Eighth did by the Lord *Cromwel*: By the First, the whole Kingdom was engaged: By the Second, the Convocation only, and that as a Court only, and not the representative of the Clergy, because as they had a Spiritual relation, so also they had the Common Right of Free-men, and therefore could not be bound without the Common Consent of the Free-men.

3. Thirdly, as their power of Convention, and power in Vote, so their Original Right of the Law making, suffered a change: formerly they depended wholly upon a Divine Right, which some settled Originally in the Pope; others, in the Prelacy, and some in the Clergy: But now they sit by a derivative power from the Act of Parliament, from which as from their Head, they receive life and power.

4. Fourthly, they suffered some change in the very work of their Convention; for though formerly they claimed power to meddle only with Ecclesiastical matters, yet that Notion was ambiguous, and they could many times explicate it more largely, than naturally. It is not to be denied, but the matters concerning the Service and Worship of God, are of Spiritual consideration, but that such should be so strictly deemed, to lie in the way of Church-men only, is to bring all Spirits within the Verge

Verge of Ecclesiastical Jurisdiction, and to leave the Civil power to rule only dead Carcases; much less can any other thing, which by prescription hath not been of Ecclesiastical Cognisance, be called Spiritual.

But to come to particulars, because generals edifie not: The Convocation claimed formerly power, as Originally from its self, to impose Rules for Government upon Church men, and Church Officers, and upon the Laity, so far as extended to their Service of God: And also to charge the Estates of the Clergy; and concerning Matrimonial, and Testamentary Causes: They claimed also a power to determine Doctrine and Heresies. Yet *De Facto*, divers of these they never acted in that right, where in they claimed to hold Cognisance.

First, as touching the charging of the Estates of the Clergy: If it was for the King's Service, they were ever summoned by the King's Writ, yet was not their Act binding immediately upon the passing of the Vote, till the Parliament confirmed the same; and therefore the old form of granting of Dismes, was, *Per Clerum & Communitatem*, as by the pleading in the Abbot of *Waltham's* Case appears; for without their Concurrence, <sup>21 E. 4 fol. 45</sup> they had no power to charge any Free-man, nor to levy the same, but by their Church Censures, which would stand them in no stead. And in this, the Convocation suffered no alteration, either in Right or Power, by the change thus wrought by *Henry* the Eighth.

Secondly, as touching imposing Laws upon the Laity, in points of Worship and Doctrine, it's evident, though they <sup>22 H. 6 fol. 14. Per Newton.</sup> claimed such power, they had it not; for when all is done, they were contented at length to get the support of the Statute-Laws of this Kingdom, as may appear in the particular Laws concerning the Lords Day, and proceedings against Hereticks, settling the Popedom in the time of the great Schism, &c. But now all Title of claim is quite taken from them, and all is left in the Supreme Legislative power of this Nation, as formerly hath been already manifested.

Thirdly,

24 H. 8. c. 12.

Thirdly, as touching Matrimonial causes, their former power of making Laws concerning them, and Testamentary causes, is now absolutely taken away; only concerning Matrimonial matters, they had so much of the Judicatory power concerning the same put upon them, as might well serve the King's own turn; and that was for determining the matter between himself, and the Lady *Katherine Dowager*, depending before the Arch-Bishop *Cranmer*: For the King supposed the Pope a party; and therefore meant not that he should be his Judge: And thus, though the Clergy had acknowledged the King to be their Supreme Head; yet in this, he was content to acknowledge their Supremacy above him, to judge between himself and his Queen, and in other matters concerning himself: So as upon the whole matter, the Convocation were gainers in some things; in other things, they were only losers of that, which was none of their own.

## CHAP. XXX.

*Of the power of the Clergy, in their Ordinary Jurisdiction.*

**T**Hose Spirits are truly degenerate, that being sensible of misery, cannot stir up desires of change, although the way thereto lies open before them: and this shews the nature of the Romish yoke, that it lay upon the Spirits of Men, did intoxicate, and make them drunk with their condition; otherwise the Usurpations, Oppressions, Extortions and Incroachments of the Popedom, upon the Bishops Sphere, and the people under their charge, could never have provoked such complainings amongst all sorts, in several Ages, from time to time. And now that *Henry* the Eighth, undertakes to set them free, so as they would acknowledge his Supremacy, they all

all are struck dumb, till a *Premuniri* taught them to speak; and so were scared into a better condition than they would have had, and into a more absolute Estate of Jurisdiction, than they received from their Predecessors. The Pope had now usurped a power, *supra* ordinary over all Appeals, gained the definitive Sentence to the Roman See, and had holden this power by the space of four hundred years, and the King finding the root of all the mischief to his Crown from abroad, springing from that Principle, meant not to dispute the point with the Casuists, but by one Statute, took away all Appeals to *Rome*, and determined Appeals from the Bishops Court, in the Arch-Bishop's Court, and the Appeals from the Arch-Bishop's Commissary, in the Court of Audience: So as though in the King's own Case, the Convocation had the last blow; yet in matters concerning the Subjects, the Arch-Bishop was either more worthy, or more willing with that trust: For though the Convocation might have as well determined all, as well as the Pope; yet for dispatch sake of a multitude of Appeals, now depending at *Rome*, and to prevent long attendance on the Convocation, that now had much to do in matters of more publick Nature, the utmost Appeal in such Cases is made Provincial. This (whether priviledge or prejudice) the Ecclesiastical Causes gained above the Civil, whose definitive Sentence was reserved to the Parliament. And thus is the Arch-Bishop made Heir to the Pope, in the greatest priviledge of a Pope, to be chief Judge on Earth in matters Ecclesiastical, within his own Province. A trick that in my opinion much darkned the Glory of the King's Title of Supreme Head, which the Church-men had formerly offered up to the Honour of the Crown of this Realm. For be it so, that the Title is in the Crown by Remitter: yet cannot the same carry along with it any more than a lawful power; and whether all the Pope's former power allowed him by the Canon, or gained by Usurpation and Custom, shall be said a lawful power, or whether the power of Review by Appeal, shall be derived to the Crown, under the general Notion of Supremacy upon the Clergies submission, is to me

*Inst.* 4. fol.  
344.

a doubt (albeit, *I must give Honour to the Judgement in Print*) in regard that after the submission of the Clergy, the matter concerning the Divorce of the Lady *Katherine* Dowager, came before the Pope by Appeal, and there depended the King himself also, waiting upon that See for Justice; and a definitive Sentence in that matter, and thereby acknowledged the Pope's power, *De facto*: Notwithstanding, the Clergies foregoing submission, and being occasioned by the delay at *Rome*, he procured this Statute concerning Appeals to be made, whereby at one breath he took the Appeals to *Rome* away, and settled them as formerly hath been mentioned; all which was done two years before the Title of Supremacy was annexed, or declared for to be to the Crown, by Act of Parliament.

And therefore, as to me it appears, the power of Supreme Cognizance of Appeals, was not in actual possession of the Crown by the Clergies submission; so was it actually vested in the Arch-Bishop, before the Title of Supremacy was confirmed by Act of Parliament; and so it never was in the Crown actually possessed, much less had the Crown the same by Remitter: For the King's turn once served by the Convocation, and the matter of the Divorce of Queen *Katherine* settled, the King perceiving the slow Progress of the Convocation, the Members of the same not being yet sufficiently tuned to the present Affairs: And moderate Arch-Bishop *Cranmer*, likewise foreseeing, that the *Odium* of these Definitive Sentences would be too great for him to bear; another Appeal is provided, more for the Honour of the Crown, to be from the Arch-Bishop to *Delegates*, to be appointed by the King, his Heirs and Successors, so as though their Nomination be the Kings, yet their power is deduced immediately from the Parliament, which took the same from the Arch-Bishop, and conferred it upon them.

A second advantage not inferiour hereto, which the Arch-Bishop gained out of the ruines of the Popedom, was the power of Licenses and Dispensations, or Faculties. In the  
Pope,

Pope, it was a transcendent power without any rule, but what was tuned to him by the Bird in his own breast; and was the ground of much license, or rather licentiousness in the World: But in the Arch-Bishop, they seem to be regulated.

To be First, in Causes not repugnant to the Law of God. 25 H. 8 c. 11.

Secondly, such as are necessary for the Honour and Security of the King.

Thirdly, such as were formerly wont to be remedied at the See of Rome; yet in truth, left as much scope for the Conscience of the Arch-Bishop to walk in, as the Pope had in former times; a large Teather, and greater privilege than ever the Crown had; by which, although the King himself be like *Saul*, higher by the Head, than all the people, yet in many things *Samuel* is higher than he. The moving cause hereof, is not difficult to find out: the King had but lately married the Lady *Anne Bullen*; a thing that many startled at, and the King himself not extremely resolved in; he would therefore have his way like that of the Zodiack, broad enough for Planetary motion of any one that could not contain himself within the Ecliptick line of the Law, and so shipped over the Pope's power to the Chair of *Canterbury*, and had made a Pope, in stead of an Arch-Bishop, but that the man was not made for that purpose. What the Ordinary Jurisdiction got or lost, we come in the next place to observe.

First, they had still their Courts and Judicatory power, but upon what right may be doubted: Their first foundation was laid by the Civil power of a Law, in the time of *William* the first *Norman* King; yet the power of the Pope and Bishop growing up together, they came to hold the power of the the Keys by a Divine Right, and so continued, until these times of *Henry* the Eighth, wherein they have a *Retrospect* to the Rock, from whence they were first hewen; and many seem to change their Tenure, and therewith therefore are in right to change the Style of their Courts, and Title of Sum-

mons, but the times not being very curious, and the work of Reformation but in *fieri*; the more exact lineaments must be left to time to finish and beautifie. A greater blow did light upon the Law of these Courts, which was left as doubtful as the Canons; all which are now put to the question, and to this day never received full resolution, but were left to the Parliament to determine them at leisure; and in the mean time to the Judges of the Common Law, to determine the same Lawful or Unlawful, as occasion should require: Nevertheless, the Courts still hold on their course, according to their old Laws and Customs, for their form of proceedings, some say by prescription, yet more rightly by permission; it being a difficult matter to make prescription hold against a Statute Law: As touching the matters within their Cognisance the Law settled some, and unsettled others.

First, as touching Heresie, the Church-men formerly thought scorn the Lay Magistrate should intermeddle, but not being able to stop the growth thereof by their Church-Censures, prayed aid of the Civil Magistracy; so by degrees arose the penalties of Imprisonment and burning, which brought the whole matter into Cognisance before the Civil Magistrate, because no Free-man might be proceeded against, for loss of Life or Liberty, but by the Laws of the Nation; and for this cause the Civil Magistrate granted the Writ of *Habeas Corpus*, and relieved many times the party imprisoned wrongfully, or granted prohibition as they saw cause: And therefore it cannot be said rightly, that the sole or supreme Cognisance of this crime of Heresie belonged to the Clergy before these times. Nor did their proceedings upon the Writ of Burning Warrant any such thing, partly because till these times the Canon Law was the best ground that these proceedings had, and the course therein was not so Uniform as to permit the Title of a Custom to warrant the same: Conviction being sometimes by jury, sometimes according to the Canon, sometimes before the Ordinary, sometimes before the Convocation, sometimes before the King, sometimes before special

*Mag. Cart.*

*Instit. 3 fol. 42.*



special Delegates, as the Histories of the Martyrs more particularly set forth, and no Act of Parliament positive in the point. But the time is now come when nighest Reformation, that the thing is settled more to the prejudice of Reformation than all the endeavours foregoing; like to the darkness of the Night, that is at the superlative degree when nighest break of Day. A Statute is now made, that indeed quite blotted out the very name of the Statute of Henry <sup>25 H.8.c.14.</sup> the Fourth, *De heretico comburendo*, but made compleat that Statute of 5 Rich. 2. and the other of 2 Hen. 5. both which were formerly neither good in Law, nor effectual, otherwise than by Power; and gave more settlement to the Ordinaries proceedings in such Cases: For the Delinquent might be convict before the Ordinary by Witneses, or might be indicted at the Common Law, and the indictment certified to the Ordinary as Evidence: yet did the Parliament carve them out their work; and in expresse words declared, That opinions against the Authority and Laws of the Bishop of Rome were not Heresie, and by the same reason might have done more of that kind, but that was enough to tell all the World that the Parliament could define what was not Heresie, although they did not then determine what was Heresie: And thus the judgement of the Romish Church is called into question, in one of their Fundamentals, and the Clergy left in a Muse, concerning the rule upon which they were to proceed against this crime.

The Parliament within six years after, undertakes, though somewhat unhappily, to determine and define certain points of Controversie, which had some relation to the Worship of God, and the publick Peace, and declared the contrary to these determinations to be Heresie, and the punishment to be Death and Forfeiture, and the trial to be before Commis- <sup>31 H.8.c.15.</sup> sioners by Jury or testimony of two Witneses, or by examination in the Ecclesiastical Court, or inquisition in the Leer, or Sessions of the Peace. Upon the whole matter therefore the Ordinary had a particular Power to determine Heresie; but

but the Parliament determined such Heresies as were punishable, with Death and Forfeiture, by enumeration in the six Articles. This was the Clergies Primmer, wherein they employed their study, as making most for their design, and laid aside thoughts of all other Heresies as dry Notions, or old fashions laid aside, and not worthy the setting forth to the common sale.

Secondly, the Lesson concerning Marriage was no less difficult for the Clergy to take out: They were put by their former Authority derived from abroad, and their ancient rule of the Canon Law; with the King's leave they do what they do, and where they doubt they take his Commission, so did the Archbishop of *Durham* in the Case between *John* and *Jane Fisher*; in the King's Case, the determining part is put to the Parliament's Conclusion; and for a rule in other Cases, some persons are enabled to marry, which formerly were not, *viz.* Masters of the Chancery, and Doctors of the Civil Law; and some forbidden Marriage, as all Priests by the Statute of the six Articles. And unto the rest concerning degrees of Consanguinity, or Affinity, a particular enumeration is appointed to be observed; within which, Marriage is declared unlawful, all other further off are made unlawful. In all which regards the Cognisance of Matrimonial Causes is theirs only by leave.

Thirdly, Residency, and Non-residency, was a Theme formerly learned from the Canon Law, in which as also in the thing it self, the Clergy were the only skillful men. The rule of the Canon Law was strict enough, considering the times, but it was not steel to the back. The Parliament now undertakes the cause; and though it gave, in some respects, more liberty than the Canon, yet stood it better to its tackling, and kept a stricter hand upon the reins, than was formerly used, and by giving a general rule for Dispensation, took away all arbitrary Dispensations, and Licenses, which were formerly granted beyond all rule, but that of Silver or Gold; and made all practices contrary to the rule, damageable to the party. Thus far concerning the matters in Cognisance; now touching the power

power of the Keys, English Prelacy having laid aside the pretensions of *Rome*, they put the World to a gaze, to see which way they would go. In the innocent infancy of Prelacy it was led by the hand, by the Presbytery; and would do nothing without them, afterwards having gained some degree of height and strength, they entred themselves to be Chariot Horses to the Roman Sun, till they had set all on fire; now upharnest, it is expected they should return to their former wits; nevertheless forgetting their ancient yoke fellows, the rural Presbyters, they stable with the King, use his name sometimes, but more often their own; serving him with Supremacy, as he them with Authority beyond their Sphere; they raise him above Parliament, he them above Councils; so as they do what they list, let the Plebeian Presbyter will or nill; they are the only numeral Figures, and the other but Ciphers to make them, *Omnibus numeris absoluti*: Nevertheless, the Canon still remains the same, *Episcopi se debent scire Presbyteros, non Dominos, nec debent in clerum dominari, Episcopus se sedente non permittat Presbyterum stare. Episcopi noverint se magis consuetudine quam dispensatione Presbyteris majores*. Kings may make them Lords, but as Bishops they hold their former rank assigned by the Canon as Lords, the King never gave them the Keys, and as Bishops the Canon did not; yet as under the joyn't Title of Lord Bishops, they hold themselves priviledged to get what power they can; two things they reach at, viz. The absolute power of Imprisonment, and of Excommunication in all causes Ecclesiastical. The common Law would never yield this; some Statutes in some cases did pretend.

*Antiq. Brit.*

*Dislin. &c.  
c. 5. Ffolio 3. c.  
Ead. Dist. E-  
piscopus.*

*Instit. 3. fol.  
40.*

First, as touching Imprisonment, the Statute of *Henry the Fourth* concerning Heresie doth lisse some such power; of what force the same Statute is, hath been already observed, in case of incontinency of Church-men, it is more directly given them by a Statute in *Henry the Seventh's* time, before which time the Statute it self doth intimate, that an Action did lye against them for such Imprisonment, which Law also

*H. 7. c. 4.*

so was made useles by another in *Henry* the Eighth's time, who gave a way to Statutes for the punishing them at the common Law.

31 *H.8.c.14.*

32 *H.8.c.10.*

First, with Death, which continued for some Months, and that being found too heavy, it was punished by another Law, with Forfeiture and Imprisonment. And the same King likewise gave way to a Law for the like punishment in case of Heretic. By that Law that revoked the Statute of *Henry* the Fourth formerly mentioned, although till trial, the same was bailable: And thus continued till the time of *Edward* the Sixth.

But as touching Excommunication, it was to no purpose for them to struggle, the common Law would never permit them to hold possession quietly; but did examine their

14 *H.4.c.12.*

30 *E.3.*

19.

22 *E.4.f.2.*

*Hil.13.H.7.*

*pl.15.*

26 *H.8.c.3.*

Authority, granted prohibition, enjoyned the Ordinary to grant absolution where it saw cause: nevertheless in some cases *Henry* the Eighth gives way to some Statutes, to allow them this Power, as in the levying of Tenths. In the next place the Prelacy had not this Ecclesiastical Jurisdiction in themselves, so as to grant it to others, but the Parliament did dispose thereof, not only to Bishops, but to Chancellors, Vicars general, Commissaries, being Doctors of the Law, and

37 *H.8.c.17.*

23 *H.8.c.9.*

21 *H.8.c.9.*

not within holy Orders, and limiting their Jurisdiction in cases concerning the Papal Jurisdiction; and their manner of sending their Process and Citations, to draw men from their proper Diocess, and also their inordinate Fees in Cases Testamentary. The Prelates therefore might possibly make great claim hereof, for generally they were still of the old stamp, loved to have all by Divine Right, and lived, they cared not by what wrong: But the Laity inclining too much to the new Religion, as then it was termed, refused to yield one foot unto their pretentions: And so like two Horses tied together by their Bits, endeavour after several courses, ever and anon kicking one at another, yet still bestrode by a King that was joynted for the purpose; and so good a Horse-man that neither of them could unhorse him, till Death laid him on the ground. And thus was the Roman-Eagle deplumed,  
every

every Bird had its own Feathers, the great men the Honours and Priviledges, the meaner men the Profits, and so an end to Annates, *Legatine levies*, *Peter-pence*, *Mortuaries*, *Monasteries*, and all that Retinue, the vast expences by Bulls and Appeals to Rome, to all the cares, expences, and toil in attendance on the Roiman Chair : The beginning of all the happinefs of England.

## CHAP. XXXI.

### *Of Judicature.*

**T**Hese two Kings were men of towring Spirits, liked not to see others upon the Wing, in which regard it was dangerous to be great, and more safe not to be worthy of regard : Especially in the times of *Henry the Eighth*, whose motion was more eager : and there was no coming nigh to him, but for such as were of his own train, and would follow as fast as he would lead ; and therefore generally the Commons had more cause to praise the King for his Justice, than the Nobility had. Both the Kings loved the air of profit passing well (but the later was not so well breathed) and therefore had more to do with Courts, which had the face of Justice : But behind were for the King's Revenue : Such were the Court of Requests, of mean Original, mean Education, yet by continuance attained to a high growth : The Court of Tenths and first Fruits : The Court of Surveyors : The Court of the Lord Steward of the Household : The Court of Commission before the Admiral : The Court of Wards : The Court of the President of the North : The Prerogative Court : The Court of Delegates : The Court of Commission of Review : Others of more private regard : And (that which might have given the name to all the rest) the Court of Augmentation. Besides these there were some in *Wales* ; but that which concerned more the matter of Judicature, was the loss of that grand Liberty of that Country, formerly a Province belonging to this Nation,

28 H. 8. c. 3 and now by *Henry* the Eighth incorporated into the same, and made a Member thereof, and brought under the same Fundamental Law; a work that had now been long a doing, and from the time of *Edward* the Third brought on to perfection be degrees.

First, by annexing the Tenure of the Marches to the Crown: Then upon occasion of their Rebellion by loss of many of their wonted Liberties. Afterwards *Henry* the Eighth defaced the bounds of divers the ancient Counties, and settled them anew, and the bounds of the Marches also, and appointed Pleas in Courts of Judicature to be holden in the English Tongue.

Rot. Claus.  
20 E. 2. M. 3.

15 E. 2. In  
Ders. M. 13.

And last of all reunited them again to the English Nation, giving them vote in Parliament, as other parcel of the English Dominions had. True it is, that from their first submission, even unto *Edward* the First, they were summoned unto Parliament, and had vote there, but only in order to the Interests of their own Country, now and henceforth they possess one and the same vote as English men. Secondly, as Courts and Judicatories multiplied, so some also of those that were ancient enlarged their Jurisdiction, especially such of them as most nighly related to Perogative; amongst others, the privy Council leads the way: Who now began to have too much to do, in a double capacity, one at the Council Table, the other at the Star Chamber: For now their Power began to be diversly considered. In their first capacity they had too much of the Affairs of the Common Pleas, in the later they had too much of the Crown Pleas; both of them serving rather to scare men from doing wrong, than to do any man right. And therefore though some men might seem to have some recompence, yet the greatest gain fell to the King and his Courtiers; and thus became Majesty, or State, or Prerogative, to be more feared than beloved. What the Power of the Council was formerly, hath already been manifested; that which both these Kings conspired in, and whereby they gained more power over the people



people than all their Predecessors, was this, that other Kings stood too much upon their own leggs, these leaned much upon the Lords, and gained the Lords to stick close to them; and in this they had both the Kings Love, and the Peoples Leave, who now disjoynted upon several Interests, especially that of Religion, must be contented to let go that which they had no heart to hold. And thus they obtained a Judicatory Power over the people; like that of great men whose censures are commonly above capacity, and not like to that of the Peers. This was begun in *Henry* the Seventh's time, who taking occasion to complain of corruption and neglect in ordinary Trials of the common Law, gets the people to yield to the Council, or some of them, a Power of *Oier* and *Terminer*, by examination upon Bill, or information in matters concerning Maintenance, Liveries, Retainers, Embraceries, corruption in Sheriffs and Juries, Riots, and unlawful Assemblies, crimes all of them of the same Blood with Rebellion, which the King as much hated as the thought of his Title to the Crown; and therefore would have it feared, as much as the punishment by such a mighty Power; and a Trial of a dreadful Nature could effect. A Trial, I say, wherein both the guilty and the guiltless adventure their whole Estates, against the edge of the arbitrary wills of great men of unknown Interests, in an unknown way, at unknown places; having no other assurance, how, or when to come off, but a Proclamation to tell the people, that the King above all things delighted in Justice. A bitter pill this was for the people to swallow, yet it was so artificially composed, that at the first taste it gave a pretty relish, the King delights in Justice, the Chancellor hath his Conscience; the Arch-Bishop brings Religion, the Judges bring Law, so as it's probable nothing will be done, but according to Justice, Conscience, Religion and Law; a very fair mixture, but that there was a Treasurer in the Case, yet the success answered not expectation, the persons offended were many times inferiour, and their Estates not great, the Offenders more mean, and of desperate fortunes; for great men were too wise to try this new way, or to taste of their entertainment. Therefore within

H. 7. c. 1.

H. 7. c. 12.

11 H.7. c.3.

12 H.7. c.41.

nine years the Judges of Assize are betruſted with all; and that Court ſo continued for as many years more; and then the King marked out one crime amongſt the reſt for his own-tooth; be-  
 longing to the great men only, for they are only to commit  
 the crime, and to give recompence ſuitable to the King's Appete:  
 It is giving of Liveries, and Retainers, a ſore evil in the  
 eyes of a jealous King, tending to draw the inferiour ſort to honour  
 and admire, and be of the ſuit of thoſe of the greater ſort, and  
 then beware the Crown. Theſe therefore muſt be tried before  
 the King himſelf and his Council, that he may know whom he  
 is to fear, and of whom to take heed. And hereupon is a ſtrange  
 power given, to ſummon upon a meer Suſpicion: To proceed  
 without Information: To examine the Defendant upon Oath,  
 and make him his own Accuſer. To puniſh according to diſcretion,  
 by Fine and Imprisonment: and thus the King and his  
 Council have gotten a power under colour of Liveries and Retainers,  
 to bring the whole Kingdom to be of their Livery, or  
 elſe they can ſuſpect whom they pleaſe; apprehend whom  
 they ſuſpect, put him preſently to the rack of confeſſion, and ſo  
 into priſon, till he hath ſatiſfied both diſpleaſure, and jealouſie,  
 and coverouſneſs it ſelf. Never was *England* before now in ſo  
 low a degree of thralldom, bound under a double knot of ſelf-  
 accuſing, and arbitrary Censure, and this out-reached, not only  
 in matters merely Civil, tending to the common Peace, but was  
 intruded alſo into matters Eccleſiaſtical in order to the Peace  
 of the Church. All bound unto the good behaviour, both in  
 Body and Soul, under peril of loſs of all that a man hath dear  
 to him in this World. The plot of all this was laid by *Henry*  
 the Seventh, and was followed by *Henry* the Eighth, who put  
 that into practice (which his Father had in deſign) being led  
 thereto by ſuch a ſkilful Guide as Cardinal *Woolſy* was, who,  
 though of mean Birth, yet of a Spirit above a King, and equal  
 to the Popedom, ſtrained the ſtring of Prerogative to its utmoſt  
 height, and then taught the King to play thereon; which  
 he did after his blunt manner till his dying day. And thus  
 though the Clergy are brought a peg lower, and the Nobility  
 advanced higher, yet was it the policy of theſe Kings to make  
 them



them all of their own Livery and Retainership, to keep them in an upper region, looking on the poor Commons at a distance far below; and well it was for the Commons thus to be, till the influence of these blazing Stars grew cooler.

## CHAP. XXXII.

### *Of the Militia.*

IT may fall within the verge of opinion, that the guilty Title of *Henry the Seventh* to the Crown of *England*, gauged his mind with jealousy, the greatest part of his Reign: Whether it were that he had not declared himself so fully upon his Title by his Wife, or that, as yet he feared some unknown *Plantagenet* would arise and put his Crown to the question: This made him skilful in the point of Fortification (wherein he likewise spent the greatest part of his Reign) not so much by force of Arms (for he cared not much for that noise, well knowing that Peace is the safer condition for a King that comes in by power) but principally by way of gaining concessions and acknowledgement from the Subjects, a Mulick that he much delighted to hear, well knowing it would conclude those amongst them that knew too much, and instruct them that knew too little; and so in time he should pass for current amongst them all. It was no hard matter for the King to accomplish this, the greater part of the Kingdom being pre-engaged unto his Title, and of them many depending upon him for livelihood, if he failed, they must look to lose all. But the present occasion urged more importantly; the Title to the Crown was already put to the question, by the pretensions of one that named himself *Duke of York*: And it's now high

high time for the Law to declare it self, to direct the people in such a Case: What shall the people do where Might overcomes Right, or if days come like those of *Henry the Sixth*, wherein the Subjects should be between two Mill-stones, of one King in Title, and another King in possession, for whom must they take up Arms? If for *Edward the Fourth*, then are they Traitors to *Henry the Sixth*; if for *Henry the Sixth*, then are they Traitors to *Edward the Fourth*; and so now, if for *Henry the Seventh*, then they may be Traitors to the Duke of *York*; if for the Duke of *York*, then are they Traitors to *Henry the Seventh*. For though the Duke of *York* was said to be but a contrivance of the House of *Burgundy*; yet a great part, both of the great men and others were of another opinion, and the King himself was not very certain of his condition for the space of six years thereby. This puts the Title of Allegiance, and that power of the Militia to the touch: at length both King and Parliament come to one Conclusion, consisting of three particulars.

First, that the King, for the time being (whether by right or wrong) ought to have the Subjects Allegiance, like to that of the wise Councillor, of that brave King of *Israel*, *Whom the Lord and his People, and all the men of Israel chuse, his will I be.* And this is not only declared by the express words in the Preface of the Law, but also by the King's own practice: for he discharged such as aided him against *Richard the Third* then King, by pardon by Parliament; but such as aided him, being King by Declaration of the Law.

Secondly, that this Allegiance draweth therewith ingagement for the defence of that King and Kingdom.

Thirdly, that the discharge of this Service, whereto the Subjects are bound by Allegiance, ought not to be imputed unto them as Treason: Nor shall any person be impeached or attainted; therefore the first and the last of these need no dispute.

The

The second is more worthy of consideration, in the particular words set down in the Statute, viz. *That the Subjects are to serve their Prince in his Wars, for the defence of him and the Land, against every Rebellion, Power and Might, reared against him, and with him, to enter and abide in Service in Battel.* Wherein two things are to be considered, the service, and the time or occasion.

The Service, is to serve the Prince in his Wars, and with him to enter and abide in Service in Battel; which is the less to be stood upon, because there is a condition annexed; if the case so require, which must be determined by some Authority, not particularly mentioned, albeit, that whatsoever is therein set down, is only by way of supposal in a Preface annexed to the Law, by the King, and permitted by the Commons; that were as willing the same should be allowed, as the King himself, both of them being weary of Wars, and willing to admit this Conclusion for the better security of them both in these doubtful times. But to lay all these aside, for the Case is not stated, till the Cause be considered. All this must be only when and where the King's Person and Kingdom is endangered by Rebellion, Power or Might, reared against him. So as the King's Person must be present in the War for the defence of the Kingdom, or no man is bound by his Allegiance, to hazard his own Life, and then this point of Allegiance consisteth only in defending the King in the defence of the Land, or more particularly in defending the King's Person, he being then in the defence of the Land; and defending him in order to the defence of the Land. So as no man can rationally infer from hence, that the King hath an universal power of Array when he pleases, because the King, when he pleases, may not levy War, nor make other War, than a defensive War, when the Land is endangered; or when need shall require, as another Statute hath it. But who shall determine this need or danger, neither in these or any other Laws is mentioned; either out of want of occasion, or by reason of the tenderness of the times, wherein both Prince and People were willing to decline the question.

Secondly,

11 H. 7. c. 18.

Secondly, the persons that are to do this service, are to be considered of, and although they are indefinitely set down under the word Subjects, it may be supposed, that the word is not to be taken in so large a sense, as to comprehend all of all Ages, Sexes, Callings and Conditions; in regard that even by the Common Law, some of each of these sorts are discharged from such service. But it may seem, the King was neither satisfied with the oppressions of this first Law concerning the occasion or time of this Service; nor did he see sufficient ground under the Notion of bare Allegiance to desire more: New ways are by him found out, his Patentees were not a few, and although few or none could ever boast much of any cheap purchases gained from him (for he was wont to be well paid before hand for his Patents, either by Money, or that which was as beneficial to him) yet he was resolved, that their holding should be no less advantageous to him, than their having; and therefore in plain words he lets them know, that notwithstanding former consideration, upon which they had their Patents at the first, they must fight for him, if they will live upon him; and either adventure their Lives or their Benefit, chuse they which, and if they find fault with their condition; he touches them with the Law of their Allegiance: and thus he makes way to intimate a claim of a more absolute Allegiance, for being to shew the Equity of the Law, in regard of their Allegiance, he tells them that every Subject is bound by his Allegiance to serve and assist his Prince and Sovereign Lord; at all seasons when need shall require; general words, that affirm nothing in certainty, yet do glance shrewdly upon an absolute and universal assistance: Then coming to drive the nail home; it is said that the Patentees are bound to give their attendance upon his Royal Person, to defend the same when he shall fortune to go in his person to Wars, for the defence of the Realm, or against his Rebels and Enemies; (and as another Statute addeth) *within the same Realm, or without, and according to their Allegiance, and not to depart without especial License, or until general Proclamation of dismissal.* In short therefore here is a new Militia, as touching the

the King's Patentees, they must attend the Kings Person whither ever the King will lead them, either within the Realm, or without; whether against such as he will suppose to be his Enemies abroad, or if he will mistake his Subjects for his Enemies at home: And this under the colour of Allegiance, published in doubtful expressions, as if it were not meet that *Henry* the Seventh (that loved not to yoke himself to the Law) should yoke his Laws under the Laws of plain language: Or rather that he held it a point of policy to publish his Laws in a doubtful stile, that such as durst question his Laws might have no positive charge against them; and such as dared not to enter into the lists with him, might not be bold to come nigh the breath of them. Nevertheless, neither doth the glance of Allegiance in the Preface of the former, nor in the body of the later Statute any whit confirm, that what is in them enacted, is done upon the ground of Allegiance, but contrarily when as the first Statute cometh to the point, it startles from the ground of Allegiance, and flies to the ground of a kind of Equity or Reason. And the second resorteth to the first as its proper ground, as being a supplement thereunto in Cases forgotten, and so omitted; though it may be rather thought that the King creeping up into his height by degrees, made the former only as an essay to prepare the way for the later, like the point of the Wedge that maketh way for the bulk and body thereof. The truth of this assertion will be more manifest from the nature of both these Laws, being limited, both in regard of time and person. In regard of time, for both these Laws are but temporary, and to continue only during the Life of *Henry* the Seventh, in regard the advancements therein mentioned, as the moving cause, are only the advancements made by himself. In regard of the person, for all persons that received advancements from him, are not bound thereby, namely those that come in to such advancement by purchase for Money: Neither are Judges and other Officers excepted persons in the said Statutes. If therefore Allegiance had been the ground of these Laws, it had equally bound all who are under the Bond, and no Equity could

have given a general Rule of discharge unto such condition of men : It had likewise bound as well formerly and afterwards, as during this King's Reign, and therefore what ever semblance is made therein concerning Allegiance, there had been no need of such Law, if Allegiance could have done the Deed, or if the power of Array had been of that large extent, as it hath lately been taken. In my conceit therefore, these two Laws do hold forth nothing that is new, but a mind that *Henry* the Seventh had to fill his Coffers, though his mind would not so fill ; he would have Soldiers, but they must be his Patentees, not for any skill or valour in them above others, but he hoped they would compound with him for Licenses to absent, rather than to adventure themselves, and so he might get the more Money that could find pay for Soldiers more and better than they were or would be ; for otherwise the Patentees might by the Statute have been allowed to serve the King by their Deputies, which would have done the King better Service in the Wars, than themselves could have done, and for this very purpose, much use was made of these Statutes, as well by *Henry* the Seventh, as *Henry* the Eighth, both for Licenses and Pardons, for composition in such Cases, as their Records do plentifully shew.

7 H. 7. c. 1.

Secondly, let the Claim of Kings be what they will, yet the matter in fact shew plainly that they never had possession of what they claimed : Both these Kings pretended a Foreign War, each of them once against one and the same Nation, and to that end advanced to one place with their Armies ; although the one went in good earnest, the other in jest : Their Armies were not gathered by Prerogative, but of Voluntiers, this not only the Records, but also the Statutes do clearly set forth. Some Soldiers served under Captains of their own choice, and therefore the Law inflicteth a penalty upon such Captains, as bring not their number compleat, according to their undertaking, other Soldiers are levied by Commission, by way of Imprest, which in those days were Voluntiers also, and expecting favour from the publick, the rather because they devoted themselves

selves thereto without relation to any private Captain; willingly therefore received imprest Money : And of this course the State saw a necessity, both for the better choice of men, and for the more publick owning of the work : For such as had been usually levied by the Captains, were fit only to fill up room, and make up the number, and yet many times there was a failing in that also ; and this manner of raising the Infantry was continued by *Henry* the Eighth, as by the like Law in his time may appear. As touching the levying of the Horse, although divers Statutes were made for the maintenance of the breed of Horses, and Persons of all degrees of ability, were assessed at the finding and maintaining of a certain number of Horses, yet do none of them tell us that they shall find and maintain them armed compleatly for the Wars, nor shall send them forth upon their own charge, and therefore I suppose they were raised as formerly ; these two Kings had the happiness to be admired, the one for his shrewd cunning Head, the other for a resolute and courageous Heart : And it was no hard matter to find men that loved to ingratiate themselves, and endeavour to catch their favour, though with the adventure of their Lives ; especially if they looked after Honour and Glory, which as a Crown they say pitched at the Goal of their Actions.

*5 H. 7. c. 5.*

*32 H. 8. c. 13.*

*33 H. 8. c. 5.*

Thirdly, concerning the pay of the Soldier, the Law was the same as formerly, the same was ascertained by the Statute-Law ; the payment was to be made by the Captain, under peril of Imprisonment, and forfeiture of Goods and Chattels, and the true number of the Soldiers to be maintained and listed, under the like peril.

*7 H. 7. c. 1.*

*3 H. 8. c. 5.*

Fourthly, as touching the Soldiers service, the same course also was taken as before ; if they dissent their Colours, they shall be punished as Felons, and the manner of trial to be at the Common Law.

Fifthly, for Fortifications, the power properly belongeth to  
 M m 2 the

the Supreme Authority, to give order therein : For the people may not fortifie themselves (otherwise than in their particular Houses, which are reputed every man's Castle) because publick Forts are enemies to the publick Peace, unless in case of publick danger ; concerning which, private persons can make no determination. And furthermore, no Fortifications can be made and maintained, without abridgement of the Common Liberty of the people, either by impairing their Free-hold, or exacting their labour, or other Contribution, none of which ought to be done, but by publick Law ; and therefore when the Inhabitants of the County of *Cornwal* were to make defence against Invasion and Piracy, from the Coast of *Little Britain*, in regard they were a long slender County, and upon sudden surprisals, people could not so readily flock together for their joynt defence, they obtained an Act of Parliament to give them power to fortifie the Sea-coasts, according to the direction of the Sheriff and Justices of the Peace.

4 H. 8. c. 1.

Lastly, Wars once begun, must be maintained at the charge of the undertakers : If they be the King's own Wars, he must maintain them out of his own Treasury, till the benefit of them do prove to the common good ; and in such cases the charges have been sometimes provided before the work, by Act of Parliament, and sometimes after.

*Henry* the Seventh, and *Henry* the Eighth, both of them at their severall times went to *Boloigne* with their Armies : *Henry* the Seventh with an intent to gain profit to himself by an advantageous peace, and had his ends therein, and was ashamed to ask aid of the people towards the charges of that War.

*Henry* the Eighth went upon his own charge also with his Army, trusting to the Parliament for consideration to be had of his employment (wherein his expectation did not fail) and in his absence, made *Queen Katherine* General of all the Forces of *England* in his absence, and gave her power, with other five Noble Personages, to take up Money upon Loan, as occasion should



should require, and to give security of the same, for the maintaining and raising of Forces, if need should require, as is more particularly set forth in the Patent Rolls of these times. Nevertheless, the War at Sea, *Infra quatuor maria*, was ever reputed Defensive as to the Nation, and under the publick charge, because no War could be there, but an Enemy must be at hand, and so the Nation in eminent danger; and therefore the maintenance of the Navy Royal in such Cases, was from the publick Treasury.

To conclude therefore, if the Parliament and Common Law in all these Cases of Levies of men for War, payment of Soldiers, and their deportment, in cases of Fortifications, and of maintenance of Wars at Sea, and the deportment of such as are employed therein, I say, if they give the Law, and carry the Supreme Directory, then certainly the Law rules in that, which seems most lawless; and though Kings may be chief Commanders, yet they are not the chief Rulers.

7 H. 8. c. 2.  
23. cap. 7.  
32. cap. 14.

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## CHAP. XXXIII.

### *Of the Peace.*

PEACE and War Originally depend upon the same power, because they relate each to other, as the end to the means, and receive motion from one and the same Fountain of Law, that ruleth both in Peace and War: It is very true, that several Ages hitherto have been troubled with arbitrary exhalations; and these very times whereof we now treat, are not altogether clear from such an air. Two Kings we have at once in view; both of them of an elate spirit; one working more closely by cunning, the other more openly by Command, yet neither of them pretending so high as to do all, or be all in all. Peace suited more.

more with Henry the Seventh, than with his Son, who delighted to be accounted terrible, rather than good; yet both of them were glad enough to be at peace at home, and were industrious to that end, though by several means. Henry the Seventh pretended Justice and Peace (a welcome news to a people, that formerly accounted nothing theirs, but by the leave of the Soldier) and therefore sets upon the Reformation of the Sheriffs Courts, in the entring of Plaints, and making of Juries suitable to that present time, wherein men of Estates were very scarce, and much of the Riches of the Nation evaporated into the Wars, both Civil and Foreign; although the continuance of that order concerning Juries in the succeeding times of opulency, hath brought these Courts into contempt, and made way thereby for the King's Courts to swell in Glory, and to advance Prerogative, even above it self.

11 H.7.c.15.

19 H.7.c.16.

Secondly, he reforms Goals, as well in their number as their use: During the Civil Wars, every small party of men that could get a strong place, made the same, not only a Castle, but a Goal, and usually imprisoned and ransomed at their own pleasure: For remedy whereof, Henry the Seventh restores all Goals to the Sheriffs, saving such as hold by Inheritance; and gives power to two Justices of the Peace, one being of the *Quorum*, to take Bail in Casesailable, and Recognizances of the Peace, to be certified at the next Sessions, or Gaol-Delivery.

19 H.7.c.10.

3 H.7.c.3.

3 H.7.c.1

Thirdly, both Kings concur in providing against such disorders, as more immediately did trench upon the publick Peace, and reached at the Crown it self, by labouring to prevent by severe punishing; and lastly, by regulating the proceedings of Judicature in such Cases.

These disorders were two; inordinate wearing of Liveries, and unlawful Assemblies: The first being in nature of unlawful assembly of minds and spirits of men, the second of their bodies and persons: Both these had formerly been provided against, but the Judges of the Common Law, unto whose Cognizance these

these Crimes were holden, did restrain their punishments to the Rule of the Common Law, then thought to be too facile and mean for disorders, that did flie at so high a pitch; and therefore they are reduced before a higher tribunal, as matter of State, as hath been already mentioned. The severity of punishment consisted not so much in aggravating the pain, as the Crime, matters of injury being made Felonies, and those Treasons. <sup>3 H. 7. c. 1.</sup> <sup>19 H. 7. c. 14.</sup>

This Crime of Treason, at first it concerned matters acted against the Nation, afterwards it reached to matters acted against the King; now it reacheth even to the very thoughts and imaginations of the heart, not only of bodily harm to the King, but of the Queen or their heirs apparent, or tending to deprive them of their Title or Name of Royal Estate: This Crime was formerly made but Felony by Henry the Seventh, and then only extended to such offence committed by one of the Kings Household against the Person of the King, or a Lord, or any of the Council, Steward, Treasurer, or Controller; so as the Person of the Queen was not then in the Case, and yet then newly Crowned, and at that instant bearing in her Womb the Royal Seed, which was then the only earnest of the stability and glory of England; and therefore it is a subject of wonderment unless it were out of extremity of Jealousie, lest he should seem to make too great account of her Title, and thereby disparage his own; and then is it a piece of wit, but not without weakness; for he that is jealous of the slights of other men, shews himself unresolved in his own pretensions. Now Henry the Eighth, not only raised the price, but added to the thing, and not only putteth the Queen, but the Prince or Heir apparent into the Case, making the same Treason: So as it implyeth, that English Allegiance tyeth the Subject, not only to the safety of the Person of the King, but also to Queen and Heir apparent; otherwise the offence is made and declared Treason against the King. <sup>26 H. 8. c. 13.</sup> <sup>3 H. 7. c. 13.</sup>

Secondly, the Election of the Object is to be considered, for whether.

whether the one or other Statute be observed, it will appear that although the King was the next object expressed, yet a further was intended, and that the Crime is not intended, in regard of his natural Capacity as a man, but of his politick Capacity, and in relation to the Common good of the Nation, and this is evident, not only from the several Prefaces of the Laws, but also from the manner of Election, whereby the Title of Heir apparent is taken up, and not the Eldest Son or Daughter, or these, and not the other Children, all which are equally dearly beloved in Natural regard.

Thirdly, though at the Common Law Treason be properly a Crime against Allegiance, yet as in Cases of Felony Crimes may be by the Statute made as Treason, which at the Common Law are not against the Legiance of an English man, for this remaineth ever one and the same, but one and the same fact may be made Treason, and unmade by the Statute-Law, as befel this Law of *Henry* the Eighth, by a Law within twenty years after; like as also in former times, one and the same fact hath many times received the like measure. Other Treasons besides these already mentioned were by *Henry* the Eighth created, as Marriage with any of the King's Sisters, Daughters or Aunts of the Father's side, or the Daughters of his Brethren or Sisters, without consent first had of the King: Counterfeiting of currant Money, not of the King's Coynage, was likewise made Treason by *Henry* the Seventh, who was well seen in that Mystery or Money-Trade, and the like also became of Counterfeitures of the King's Privy Signet and sign manual.

And lastly, that horrid trick of poysoning was reduced to this Category, rather that the Penalty might be more terrible in the Death (which was by boyling) than for any Tincture in the Nature of the Crime, or in any Forfeiture of Estate.

The policy of these times thus irritated against Treason, had proved very irregular, if the same had not been as rigid in Cases

Cases of Felony : divers new ones of that kind are also dubbed, amongst which Conjurat<sup>o</sup>n or Witchcraft comes first ; an old Felony in the Saxons time, but since had gotten its Clergy, now well nigh for the space of five hundred years, and they it, so as it never walked abroad amongst the Laity, but under the favour of the Cloystered people, nor ever came before the Civil Power, till now *Henry* the Eighth brought it forth into its own ancient and proper Regiment. Other Crimes being those of the season are made into the same degree : Such as were taking<sup>3</sup> of women into captivity ; unlawful huntings with disguises,<sup>1</sup> malicious breaking of the Dikes and Banks in *Marshland*;<sup>22</sup> Servants embezzelling their Masters Goods, to the value of<sup>21</sup> forty shillings or upward, which ( besides that of Heresie, whereof formerly) though of a new stamp, yet of so good a constitution, that they remain unto this day under the same brand.

But let the Laws be never so severe, if they have not free liberty to walk at large, they are soon ghostless, and therefore these two Kings, especially the later, gained that Honour above their Predecessors, that they gave the Law a free and full scope over all persons but themselves, and their Assignees, and in all places. First, concerning places, every one knows the Notion, but few considered the extent of Sanctuary Ground in *England*, that could Sanctifie any Crime or Criminal person in such manner, that though the eye of Justice could see, yet the hand of Justice could never reach them, till *Henry* the Eighth plundered them of all their Sanctity, and made all places common, so as no Treason could hide it self, but where the Act of Parliament did appoint, and turned<sup>26</sup> their names from Sanctuaries to privileged places. The<sup>17</sup> sanctity of the person was yet more mischievous and hard to<sup>32</sup> be reformed, it had been often attempted before these times with little success. *Henry* the Seventh gained some ground herein beyond his Ancestors ; the Delinquent might have his Clergy once, but not the second time (though he fled to the horns of the Altar) and was ever after known by a<sup>4</sup> brand

brand in the hand. Thus far did *Henry* the Seventh go, and would have done more even as far as unto those in Holy Orders. But *Henry* the Eighth coming on, in point of Treason, made all persons common without respect of their orders or profession. Death makes an equal end of all. In Cases of Murther, Robbery, Burning of Houses, Felonies done in holy Ground, High-Way, or Dwelling-House; refusal of Trial, peremptory challenge of above twenty of the pannel; Servants imbezzelling their Masters Goods in value forty shillings or upwards; in all these Cases no Clergy could be allowed, but to persons in Holy Orders, and those also to be perpetually Imprisoned in the Ordinaries Prison; and yet this exception held not long in force, but these men also were equally wrapped up in the same course, to have their Clergy, and indure the brand even as other men:

23 H.8. c.1.  
4 H.8. c.12.  
25 H.8. c.3.  
23 H.8. c.1.  
32 H.8. c.3..

Two difficulties yet remain, which hindred the execution of the Laws against Treason. One concerning the place, the other the person.

The place many times of the plotting and beginning of the Treason befalleth to be without the walk of the King's Writ, in which Case by the Common Law it cannot be inquired or tried, or it may be, that the men of the place be generally disaffected, and then no hope of finding out the matter. In such Cases therefore it is provided, that be the Crime wheresoever the Delinquent will, it shall nevertheless be inquired, and tried where the King will.

28 H.8. c.15.  
33 H.8. c.22.

The Person of the Delinquent also many times changed its condition; it might be sober at the time of the Delinquency, and afterwards upon discovery, prove lunatick, and thereby avoid the Trial, this whether in jest or earnest, by a Statute is made all one, and it is ordained, that in Case the fact be confessed by the Delinquent before the Lords of the Council, at such time as the party accused was of sound mind, and the same be attested under the hands of four of those Lords, the same shall be a good ground to proceed to inquisition before Commissioners, and the same being found, to try the Delinquent without

35 H.8. c.2.

without answer or appearance, saving unto Barons their Trial by their Peers. And thus however in their Fits, the Will of the Persons of these Kings was too hardy for the Kings to manage according to Rule, yet the Law still in Title kept the Saddle, held the Reins, and remaineth the chief Arbitrator unto every man.

## CHAP. XXXIV.

*Of the general Government of Edward the Sixth,  
Queen Mary, and Queen Elizabeth.*

**W**E are at length come within sight of the shore, where finding the Currents various and swift, and the Waves rough, I shall first make my course through them severally, and then shall bring up the general account of the Reigns of one King and three Governours.

The King was a Youth of about ten years old, yet was older than he seemed by eleven years; for he had all the Ammunition of a wise King, and in one respect, beyond all his Predecessors, that made him King indeed, *By the grace of God*. He was the only Son of *Henry* the Eighth, yet that was not all his Title, he being the first President in the point of a young Son, and two elder Daughters by several venters; the eldest of whom was now thirty years old, able enough to settle the Government of a distracted Nation; and the Son so young, as by an Act of Parliament, he was disabled to settle any Government at all, till he should pass the fifteenth year of his Reign: But the thing was settled in the life-time of his Father, whose last Will, though it speak the choice, yet the Parliament made the

28 H. 8. c. 5.  
35 H. 7. c. 1.

Election, and declared it. The condition of this King's Person, was every way tender; born and sustained, by extraordinary means; which could never make his days many, or Reign long: His spirit was soft and tractable, a dangerous temper in an ill air; but being fixed by a higher principle than nature yielded him, and the same, beautified with excellent endowments of Nature, and Arts, and Tongues, he out-wont all the Kings in his time of the Christian World. His Predecessors provided Apparel and Victual to this Nation, but he Education, and thereby fitted it to overcome a fiery trial, which soon followed his departure. The Model of this Government was as tender as himself, scarce induring to see his Funeral; ready for every change, subject to Tumults and Rebellions, an old trick that ever attends the beginning of Reformation, like the wind the Sun rising. The diversity of Interests in the Great Men, especially in point of Religion, for the most part first set these into motion; for some of them had been so long maintained by the Romish Law, that they could never endure the Gospel: and yet the different Interests in matters of State, made the greater noise. All was under a Protector fitly composed to the King's mind, but ill matched with rugged humours, aspiring minds; whereof one that should have been the Protector's great Friend, became his fatal Enemy, and though he were his Brother, to prejudice his Interest, pawned his own blood: The other which was the Duke of *Northumberland*, had his will, but missed his end; for having removed the Protector out of the way, and gotten the chief power about the King, yet could he not hold long what he had gotten; for the King himself, after sixteen months decaying, went into another World, and left the Duke to stand or fall before some other power, which came to pass upon the entry of the next Successor.

The greatest trouble of his Government arose from the prosecution of a design of his Grand-father, *Henry the Seventh*, for the uniting of the two Crowns of *England* and *Scotland* by marriage, and settling an induring peace within this Isle; and



and unto this work all were aiders in both Nations, but the Enemies of both: But God's ways are not as Man's; it's a rare example to find out one Marriage that did every thrive to this end. *England* meant well in profering Love, but the wooing was ill-favourably carried on by so much Blood.

Lastly, as the Government was now tender; so was it carried with much compliance with the people, which ever gives occasion to such of them that are irregular, to be more, and such as are well governed to be less, because though pleasing it be, yet it is with less awe and spirit, which renders their obedience at the best but careless and idle, unless such as are very conscientious be the more careful over their own ways, by how much their Superiours are the less.

Not thus was Queen *Mary*, but (like a Spaniard) she Q. Mary. over-ruled all relations and engagements by design; she was about forty years old, and yet unmarried when she came to the Throne, it may seem she wanted a mind to that course of Life from natural abstinency, or was loath to adventure her feature (which was not excellent) to the Tbuan. vol. 1. lib. 13. Censure of any Prince of as high degree as she held her self to be; or her value was not known, so as to persons of meaner Interests she might seem too much above, and to those of greater too much beneath: Or possibly her Father was loath to let the World know her Title to the Crown till needs must, or to raise up a Title for another man so long as he had hope of a Son of his own to succeed him, and yet had formerly designed her for a Wife to *Charles* the Fifth, and afterwards Tbuan. vol. 1. lib. 1. to the Dauphine of *France*: Or it may be her self had set a command of her self, not to change her Estate till she saw the course of the Crown, either to or fro; however, the time is now come that she must marry, or adventure her Woman-hood upon an uncertain and troublesome state of Affairs: She liked the Lord *Cournee* above the Prince of *Spain*, but feared he would not design with her: She held him

Fox

him not unmeet for her degree, for she feared he was good enough for her Sister, that then also had the Title of a Kingdom waiting so nigh her person, as she was an object of hope to her Friends, and fear to her Enemies. And yet Queen Mary married the Prince of *Spain*: It may be it ran in the blood to marry into their own blood, or rather she was thereto led by reason of State, partly to enable her with greater security in the resecure of her Kingdom, in the Popish Religion, wherein she knew she had to do with a people not easie to be reduced, where Conscience pretended reluctancy; and partly to assure her Dominion against the out-works of the French and Scottish designs. And so she yielded up the Supremacy of her Person to the Prince of *Spain*, but (thanks to the Nobility) the Supremacy of the Kingdom was reserved to her own use, for it was once in her purpose to have given up all to the man, rather than to miss of the man. And yet their condition was not much comfortable to either: the peoples dislike of the match sounded so loud abroad, that when the Prince was to come over, the Emperour his Father demanded fifty Pledges for his Sons safety, during his abode in this Land, which was also denied; when he was come over, the English fear the Spanish Tyranny, and the Spanish, the old Saxon entertainment of the Danes; so both lye at their close guards, as after some time the King and Queen did no less, for the Queen was either never earnest in her affection, or now much less, finding his Body diseased, and his Mind lingering after unlawful game. On the other side, the King not finding that content in her Person (especially after her supposed Conception) that he expected, looked to his own Interest apart from hers, and thereby taught her to do the like; and this she thought cost *England* the loss of *Callis*, and he *Spain* the loss of many advantages that might have been obtained, and was expected from this conjunction. Thus by the severall interests between the King Regnant, and the Queen Regent, the Government of *England* became like a knot dissolving, neither fast nor loose.

Towards the people she might well be reserved, if not rigid;  
for

for she knew her entry was not very acceptable though accepted; and that her design was contrary to her engagements; and therefore it was vain to think to please her self, and pleasure them. Nor did she much busie her thoughts therewith, that abominated trick of Impost upon Merchandise she brought into fashion, which had by many publick Acts been damned for the space of two hundred years; this was done without either shame or fear; for if the people turned head, she knew she had a good reserve from *Spain*, and the people might very well consider of that, though for her part she desired not much to improve that Foreign Interest; because she might well see that *Spain* designed to keep *England* so far beneath, that *France* might not get above: And that *Philip* neither loved the double Crown of *England*, no, nor the triple Crown at *Rome*, otherwise than in order to that of *Spain*. *C. 2. Instit. fol. 61.*

This distance between her and her King, wrought her to a more nigh dependency upon her Council and English Nobility, and so became less discerned in her Government; although questionless she did much, and wanted not Wisdom or Courage to have done more, but that she was wholly not her own Woman: All men do agree that she was devout in her kind of profession, and therein as deeply engaged as her Brother *Edward* had been in his; though it may be out of tenderness of Conscience, but she out of a Spanish kind of gravity, that induces not change: and whereunto she was well aided by her Clergy, who were her beloved for her Mothers sake, and now also so much the more sower, by how much the nigher to the bottom: It's the less wonder therefore, if the Zeal of these times burnt into a flame, that at length consumed even those that kindled it. In one thing more above all the rest, she acted the part of her Sect, rather than her Place, and the same contrary to the advice of her Ghostly Fathers, and all Rules of Policy, and the agreement between her King and self upon Marriage; which was the engaging of *England* in the War at Saint *Quintins*, against the French, contrary to the National League formerly made: Nevertheless, the issue was but suitable, for though the

English

English obtained their part of the Honour of that day, yet in the consequence they lost *Callis*, the last foot that the English had in *France*; henceforth *England* must be content with a bare Title: As this was deserved, so was it also reserved by the Queen, to make the World believe that she died for grief therefore as a Mother of her Country; although her bodily disease, contracted by a Conception, wherein she beguiled both her self and the World, concurred thereto. In sum, the worst that can be said of her, is this, That she was ill principled; and the best, that she acted according to her principles, and so lived an uncomfortable Life, shaped a bloody Reign, and had but a dim Conclusion.

The night was now spent, and *Queen Elizabeth* like the morning Star rising into the Throne, sent forth the benignant Influence of both her Predecessors, and many ways excelled them both, she was begotten in a heat against *Rome*, wherein also she was born and trained up by her Father and Brother *Edward's* Order, and saw enough in her Sisters course to confirm her therein. For *Queen Mary* was not very Catholick in her Throne, though she was in her Oratory. Nevertheless, *Queen Elizabeth's* Course hereunto was very strange, and might seem in outward respects to lead her quite wide, for her youth was under a continual yoke, her Mother dead whiles she was at the breast; her Father owning her no further than as his Child born of a Rebellious Woman, never intending her for the Crown, so long as any hope was left of any other; with her age the yoke grew more heavy, her Brother *Edward* being but of the half-blood, except in point of Religion, might respect her at a distance beyond his Mothers Family, but this lasted not long, her Sister *Mary* comes next, of a stranger blood to her than her Brother was; looking ever back upon her as one too nigh her heel, and more ready to tread upon her Train than support it, the difference in Religion between them two added yet further Leven, and this occasioned from her Sister, to her many sower reflection, bitter words, harsh usage, concluding with Imprisonment, and not without danger  
of

of Death : All which Queen *Elizabeth* saw well, made the less noise in Religion, walked warily, and resolved with patience to indure the brunt ; for she might perceive by her Father's will that her way to the Crown, if ever she arrived at the end, must be through a field of blood ; and though she knew her change of Religion might make the way more plain, yet God kept her in a patient waiting, until the set time was come. Thus passing over her Minority with little experience of youthful pleasures, she had the happiness to have the less sense of youthful lusts, which meeting with natural Endowments of the larger size, rendered her the goodliest mirror of a Queen Regent that ever the Sun shone upon, God adding thereto both Honour and continuance, above all that ever fate in that Throne : Her entrance was with more joy to others than her self, for she kept her pace as treading amongst-thorns, and was still somewhat reserved, even in matters of Religion, though she was known to be devout. She had observed that the hasty pace, both of her Brother and Sister brought early troubles before either of them were well settled in their Throne. And therefore whereas her Sister first set up the Mass, and then endeavoured to settle it by disputes, she contrarily first caused the point to be debated, and thereby gained liking to lay it aside. It's true, the moderatorship in that dispute was imposed upon a Lay man (as their term is) but his work being to hold the disputants to order in debate, and not to determine the point in Controversie (which thing was left to the Auditory) might therefore more rationally be done by him, than censured by any Historian, that shall undertake to judge them all.

The first step thus made, one made way for another till the whole became leavened ; her proceedings against Opposers were with much lenity, rather overlooking, than looking on ; and such as stood more directly in her path, she would rather set aside than trample down : And be fair to all (without respect to difference of Religion) that would be fair to her. Much of her happiness depended upon Election of her Council, more in observing their advice, that whether

*Forcat. de Gal.  
imp. lib. 7.*

Quint. lib 1.  
cap. ult.

she did rule, or were ruled, or did rule by being ruled, might deserve some consideration: This she did to give satisfaction to such as took prejudice at her Sex, rather than out of any sense of imbecillity in her own intellectuals, for therein she equalled the best of her Predecessors, and in *Manner* Endowments exceeded them all. Generally she was of a publick mind, if not popular, she loved to be seen of the people, and yet kept her distance: Her Sex taught her to use her tongue much, and her education to use it well and wisely: That, with a reserved carriage, was her Scepter, winning thereby applause from the inferiour sort, and awe from the greater. A wise man that was an eye witness of many of her Actions, and of those that succeeded her, many times hath said, That a Courtier might make a better meal of one good look from her, than of a gift from some other King. Another felicity She had beyond others of her place, She loved not to be tied, but would be knit unto her people. To them she committed her confidence under God, and they to her their chiefest Treasure on Earth, *viz.* Their hearts to her Parliament, which was the most considerable party that She had to deal with, She could personate Majesty equal to any Emperour, and advise, commend, yea, and chide if She saw occasion: And yet ever had a trick to come off with a kind conclusion without blur of Honour. So as of thirteen Parliaments called during her Reign, not one became abortive by unkindness; and yet not any one of them passed without Subsidy granted by the people, but one wherein none was desired: And sometimes the aid was so liberal, that She refused the one half, and thanked the people for the remnant; a courtesie that rang loud abroad to the shame of other Princes. She would often mention her Prerogative, and yet not hold her self wise enough, either to interrupt the Judges in their way, nor the Bishops in theirs: Albeit, She spared not also, as She saw occasion, to check the best of them for their irregularities; She had no Beloved, yet entertained Favourites at a cheaper rate, and in better order, than Kings use to do; for She had a preferment within her power beyond the reach of them all, and passion also soon at command, or  
rather

Bodin. rep. l. 6.

rather sometimes beyond command : Yet if calmly taken , it ever proved good for that party ( that suffered ) in the conclusion . However, her love She held under her own power, and therein excelled her Fore-fathers ; She had the Precedent of her Sister ( that adventured upon a Prince for her Bed, and missed what She expected, and lost what She had ) and thereby learned to call into question the possibility for her to gain the private contentments of a married Life, and therewith maintain her publick Interest in [the Kingdom ; and therefore resolved rather to sit alone than to sit below, and to refuse the help of any Consort, rather than to part with any one jot of her Interest in the people : So She remained above the people and her self, and thereby enjoyed both . But Custom in Government growing, together with infirmities of age, made her Regency taste somewhat stale and spiritless, and gave occasion to mens minds to wander after the next Successor ; before She had been nine years Queen, this scrutiny was once begun ; but it received a fair answer of delay, because it was then taken as done in love, now the apprehensions hereof according to her age are more sad ; She thinks them weary of her, and thereupon She is weary of her self and them : She supposes She can no longer give them content ; the Lords have the power, they will not be ruled ; and such like dark thoughts working upon an aged body, weakened with other infirmities, wasted her spirits, and hastned a conclusion unto a weary life, her self not unwilling herewith, and her Courtiers less, who expecting more from Successors than they find, lived to dis-desire and unwith their former choice by late repentance ; thus making the ending of her days, the renewing of her Reign in the hearts of all that observed her alive, or consider her ( now dead ) in the written Registers of her Fame.

## CHAP. XXXV.

### *Of the Supreme Power during these Times.*

**T**He Supreme Power, but ere while monstrous in the two former King's times for Greatness, now suffers as great a diminution, over-shadowed by infancy, womanhood, and Coverture; and gives the people breath to beware for the future, *Ne potentes si nocere velint non possent*; nevertheless the loss was only of the Hydropical humour, and the Government came forth more clearly like it self. In the point of Infancy, *Edward* the Sixth bears it forth, being the seventh President of Infancy, ruling under Protectorship, since the Norman times; yet beyond all the rest in managing his Supremacy in Church matters, which none of them all did ever engage upon before him.

English Prerogative and Supremacy are Notions of a sublime Nature, and commonly looked upon as the Holy Mount at the Delivery of the Law, at a great distance, for fear of death or undoing; and yet it is such a thing as a child may handle without hurt done, either to the Estates, Persons or Consciences of any Man; because it's presupposed he does nothing, but what the Law first dictates by his Council unto him. There is then no infancy in the Crown, though in the Person, because the wisdom of the Crown is not intended to rest in one Person, but in the Counsels of many, who are equally wise, whether the Person of the King be old or young. And the Statutes made by *Henry* the Eighth, by which this King had power by his Letters-patents, after the age of 24 years, to adnul any Act of Parliament made by him before that time, was not grounded either upon Principles of Law, or general Reason of State, but upon some particular circumstances of the state of the Affairs, as then they stood; and therefore is this power limited only to such Heirs

OR



or Assignees of Henry the Eighth, to whom the Crown shall come by his appointment. Nor did it ever thrive to that desired end, whereto it was intended: for upon the entry of Edward the Sixth, the Councils changed, and the Parliament took this Statute away, as scandalous to the Fundamental Government of the Nation, and in stead of the power of Adnulling, allowed of the power of Repealing; yet so as until such time of Repeal, the said Statutes and all Acts thereupon done, shall for ever be deemed warrantable and good. This was too much, but that the Times were yet in *Equilibrio*, and men were loath to part with their Interests, which they did hang upon that Power of Reserve, unto the King's Letters-patents: yet in that the Power is limited, not only in regard of the manner and time, but of the persons, and also of the Statutes that are to be repealed: it is sufficient to vindicate the nature of this Prerogative (if such it were) to be no ways inherent, but acquired by Concession. But as touching the Legislative Power, they would not trust it in the least manner to any other King. The Parliament had crowned Proclamations at the instance of Henry the Eighth, with that Royal Title of Laws, in manner as formerly hath been noted. Now all Interests, both of the Popish, and of the Reformed parties of this Nation, are against it; the former because they saw the King's present way to be against them, and both it and the later because the thing it self was abominable unto the Liberties of the people, and therefore it is soon taken away by Repeal, and the Legislative Power is wholly re-assumed to themselves, as formerly: For though in matters Ecclesiastical, the Power of the Crown might seem to be more pre-eminent in regard of the Supremacy, and some particular Powers in making Bishops by Election without *Conge deslive*, yet did the Parliament neither yield, or acknowledge any Legislative Power to be in the Crown thereby, but proceeded on in that way of the thirty and two Commissioners formerly agreed upon by them, in the time of the King's Father. Thus the King, though an Infant, was a Gainer, and the Crown nevertheless still the same.

1 E. 6. c. 11.

31 H. 8. c. 8.

1 E. 6. c. 12.

1 E. 6. c. 22.

3 & 4 E. 6. c. 11.

Secondly,

Secondly, that Crown that may be worn by an Infant, may much rather be worn by a Woman, whose natural Indowments do far exceed the other, and are not inferiour unto the most of men: Of this we have two Examples in these times, Queen Mary and Queen Elizabeth, of several professions in matters of Religion, and liable to exceptions, in regard of their Sex, by men of the counter-profession on both sides; yet both upheld the Honour of the Crown, though therein the one more especially, being neither ingaged in the Roman Cause, nor in the Estate of Marriage, as the other was. This was Queen Elizabeth, in person a Woman, but in mind indowed with all the perfections of a man; she could not indure to abate one hairs breadth of her State; and yet upon the sole regard of her Sex, she submitted her Title of Supremacy, to a more moderate name of Supreme Governour, whereas her Father would be called Supreme Head, as if it were not only hazardous, but hideous for a Woman to be Supreme Head of the Church; and for this cause would she not revive that Statute made by her Father, and continued by her Brother Edward the Sixth, and repealed by her Sister Queen Mary: Nevertheless such as she was, she had all such Jurisdictions, Priviledges, Superiorities, and Pre-eminencies, Spiritual or Ecclesiastical, as by any Ecclesiastical Power or Authority formerly had been, or might be lawfully exercised, for Visitation of the Ecclesiastical State and Persons, and for Reformation, Order and Correction of the same, and all manner of Errors, Heresies, Schisms, Abuses, Offences, Contempts and Enormities; she had therefore neither absolute Empire, nor absolute Jurisdiction over the Churches; neither Power to make, declare, alter, or repeal any Law; neither did she ever exercise any such power but only by Act of Parliament: She had a Power over Ceremonies in the Worship of God, which was given her by the Parliament to execute by advice, and therefore was limited, as also was all the remainder of her Power in Jurisdiction Ecclesiastical; for she could do nothing in her own Person, but by Commission: and these Commissioners must be Natives and Denizens, not Forainers; and the same to be but in certain Cases, and with certain Procefs. Some Cases

26 H. 8. c. 1.

1 Eliz. c. 1.

1 Eliz. c. 3

Cases of Ecclesiastical Cognisance were referred to Trial at the Common Law, viz. Such as concerned the publick Worship of God in Cases of Forfeiture and Imprisonment. 13 Eliz. c. 12  
23 Eliz. c. 1.

Lastly, neither had the Queen, nor her Commissiones, nor Bishops, absolute Power over the Church-Censures; no Censure was regarded but Excommunication, and that no further than in order to the Writ, *De Excommunicato capiendo*, and in all Cases the same was to be regulated according to the Statute in that Case provided, or by the Common Law in Case of Action: In all which we find no Jurisdiction in Cases Ecclesiastical, that is absolutely settled in the Crown: In matters Temporal the thing is yet more clear; she never altered, continued, repealed, nor explained any Law, otherwise than by Act of Parliament, whereof there are multitudes of Examples in the Statutes of her Reign; and what she did by her Judges was ever under Correction. A Woman she was, and therefore could be no Judge, much less in the Cases of Difference concerning her self and her Crown. A Queen she was, and might make Judges, but she must go according to the Law; new Judicatories she could make none; nor judicially make, declare, alter, or determine the Power of any Court or Judge in Case of Difficulty, but by her Parliament; as in the Cases concerning the Power of the Lord Keeper, the Powers of the Commissioners of Sewers and charitable uses, the Courts at *Westminster*, and the County Courts, in the several Statutes concerning the same, may more fully appear. And which is yet of a meaner size, her Power extended not to redress any inconvenience in process of Error, or Delay, in Courts of Law, nor to remedy Errors in Judgements, Fines, Recoveries, Attainders, or other matters of Record or Trial, whereof the Statutes of her time are full, and also the opinions and Judgements of the Judges of the Common Law concurring therewith: I mention not the power of life and member, which without all contradiction hath ever been under the protection of the known Law; so as upon the whole Account it will be evident, that this Queen had no absolute Pre-eminence in all Cases, but either in contradiction

to

to Foreign Power, or the power of any particular person, and not in opposition to the joynt interest of the Representative of England.

Queen Mary comes next, although a Woman as well as she, yea, her elder Sister and Predecessor, yet came short of her in the point of Supremacy, by a double submission, both unto the Law of a Husband, and of a Foreign Power in Cases Ecclesiastical; although the same was with such qualifications, as it was much more in Title and pretence than in reality; and so in the conclusion, neither approved her self to be good Wife, good Catholick, nor good Queen. She could be no good Wife, because she was too great for her Husband within the Realm, and resolved not to be without. A Catholick she was, but the worst that ever held her place: her Father appeared what he was, spake plain English, and was easily discerned. But she told the Pope a fair Tale of disclaiming Supremacy, and reconciling her Kingdom; yet none of her Predecessors did go beyond her in irregularity of her proceedings. Before ever she called Parliament, she settled the great Work of Reformation, or rather Deformation in the Worship of God, by single Proclamation, and not only took away the partition-wall of Doctrine by the like power, but gave way and power to persecution thereupon, to arise before any Power or Order from the Holy See, then so called, inabled her thereunto. And after that she declared her self convinced, that she ought not to exercise Ecclesiastical Jurisdiction, and by her Instructions forbad the Bishops to use in their Process, that Clause of *Regia Autoritate fulcitus*, yet even these Instructions had no other Authority than her own; and nevertheless, she still inforced the Execution of all matters concerning the publick Worship of God, and Government of the Church, when as yet the Pope had no admittance unto his ancient claim. It is very true, that the Pope long ere now had made a fair offer, and the Queen had lent her ear, but her Train was too great to move as fast as was pretended, so as no meeting could be had till the Queens Marriage with Spain was past, and such as were disaffected, found

found it was bootless to stop the Current of two such mighty streams of Power, now joyned into one; and so that unclean spirit returned seven times worse than when he went out, and took *Seisin*, meerly upon Repeal of the Laws made by *Henry* the Eighth, in the Negative, without farther Grant or Livery: For though an expresse Embassage was sent to *Rome*, to perform the solemnity of the submission, yet the Pope died before the arrival of the Embassie, and the solemnity failing, left the Title of the Crown much blemished, yet was it not wholly defaced; for if the Statutes in *Henry* the Eighth, and *Edward* the Sixth's time, did but confirm the possession, it's evident that the repealing of those Statutes took away no Right from the Crown, nor gave legal possession to the Pope, that had formerly neither possession nor right, but left him to his Remitter, as in his ancient right, or rather in his ancient wrong. Yet right or wrong, *de facto*, he both did win and wear the Keys so long as the Queen lived, and so far as she pleased; for her devotion would not allow of absolute obedience in that kind, nor all for Gospel, that the Pope said or did; but by her self and Council, executed the powers of Supremacy of Jurisdiction in Church matters, not only in pursuance of the Papal Authority, but in crossing the same where the Popes way crossed her opinion, as in the Cases of the War between her Husband and *France*, and the Power Legatine of Cardinal *Pool*, her condemning of Doctrines and Books to be Heretical by Proclamation, establishing both Prayers and Dirges, and other Orders of publick Worship, whereof more fully in the publick Histories of those times, and the Queens Injunctions upon occasion of the Death of Pope *Julio*, is to be seen.

Lastly, she was no good Queen, not only because she gave up the peoples Liberties in Ecclesiastical matters to the Foreign Jurisdiction of *Rome*, but undertook too much therein by far upon her own account, and in Civil Affairs, though *De jure*, She was not inferiour to any of her Progenitors; yet She would have it declared by the Parliament, as if the consideration of her Sex or Birth, had made some hesitation in her mind, and when she had made all clear, the commending her self thereby

2 Marl. Parli-  
ament 2. c. 1.

to the Prince of *Spain*, with her self, indangered likewise that trust of the Nation, which she had received, and cast such a shadow upon her own Supremacy, as in many things it is hard to be discerned.

Lastly, in her whole course uneven, sometimes appearing like the Eldest Daughter of *Henry* the Eighth, at other times like a Fem-covert, led by the will of her Lord and Husband, that wanting Supremacy himself, rendered her thereby beneath her self.

For first, she married by Act of Parliament, as if she were not at her own disposing, professing as much in her speech to the Londoners, upon the Kentish Rebellion; so a difference was made between the two Sisters, the Marriage of the one being by advice of Parliament, and the abstinence of the other against the same. Nor is the same altogether irrational, for by the one the Government of the Nation is indangered, and by the other otherwise.

Secondly, by her Marriage she became doubly married, one way relating to her Person unto her King; the other relating to her trust unto her Council: For where a Foreign mighty King is so nigh the Helm, it's dangerous to trust the same to his Wife without the joynt concurrence of the Lords. The matter in fact declared no less, for many times she had steered quite wide, had not the Lords been more stiff to their principles than she.

The first year of her Marriage was Honey-moon with her, she thought nothing too dear for the King, and that her self was but meanly married, unless her Husband were as complete a King in her Nation, as any of her Predecessors, although contrarily the higher he was advanced, the meaner she became.

Thirdly, by her Marriage she adventured her Title of Supremacy of Jurisdiction: For *Philip* as King had the Honour, Stile and Kingly name, and so had the precedency; he had to do also with the Jurisdiction, for by the Articles of the Marriage, he was to aid the Queen in her Administration of the Kingdom, and maintenance of the Laws, Writs and Commissions

Commissions, passed under his name : He also sat in Parliament, voted therein, and joyned in the Royal Assent.

• Lastly, joyned in the publication, and execution of all Laws. To him also was Allegiance due, and therefore the Crime of Treason was equally against his, as the Queens Crown and Dignity, saving that it was reserved to be as against him only during the time of Coverture, and yet had the Queen left issue by him, it would have been a hard adventure for the Lawyers to have given their opinion in that case, seeing the King had been Guardian to his Children during their minority. 1 & 2 Phil. & Mary, cap. 10.

Lastly, the whole power and jurisdiction resting in them both jointly, could not enable them to make or dissolve Courts at will, nor conclude orders and directions in cases of Plea and Conveyance, nor Process concerning the same. I shall sum up 1 Mar. Sess. 2. cap. 11. & c. 5. & 7. & c. 12. all in this one conclusion, if neither of these three had an absolute Legislative Power, either in matters concerning the Church or Common-Wealth, if no absolute jurisdiction in case, either of Life, Member or Estate: If they neither can create, unite or alter any Court, either concerning the Trial, and determining the Estates of the People, or their own Revenue. If not alter, or make any new Process in the Courts of Law: If not order common assurances of Lands or Estates,

And lastly, if they have no power in determining the last appeal and definitive sentence in matters of controversy, but all must rest upon the sentence by Parliament, there must certainly be found out a further sense of that grand Title of Supremacy of Jurisdiction, Power, Superiority, Pre-eminence and Authority, than by the common vogue hath been made. The Title of Supremacy, was first formed in the behalf of Henry the Eighth's Claim in matters Ecclesiastical, which by the Statute, is explained under these words of power, To visit, correct, repress, redress, Offences and Enormities: This Power and no other did Queen Elizabeth claim, witness the words of the Statute in her own time. But in the framing of the Oath of Supremacy in her time, not only in causes Ecclesiastical, but Temporal (which never came within the Statutes and publick Acts in Henry the Seventh's time) are inserted; and if any thing more was

intended it must come under the word *Things*, which also was inserted in the said Oath, and yet if the words of the Statute of Queen *Elizabeth* formerly mentioned be credited, the word *Things* ought to comprehend no more than the words *Causēs*, and then the Power of Queen *Elizabeth* in the Commonwealth will be comprehended in these words of Supremacy, to visit, correct, repress, redress, Offences and Enormities, for the Supremacy in the Church and Commonwealth, is the same in Measure, and what more than this, I cannot understand out of any publick Act of this Nation. Now in regard Offences and Enormities are properly against Laws, the power to visit and correct must also be regulated according to Laws, either of War or Peace, nor do these five words, Jurisdiction, Power, Superiority, Pre-eminence and Authority, contain any more Supremacy, or other sense; for two of them speaks only the Rank or Degree of the Queen in Government, *viz.* Superiority and Pre-eminence belongeth only to her, and not to any other Foreign power: And two other words do note her Right and Title thereto, by Power and Authority committed to her: And the other word denotates the thing wherein she hath Superiority and Power, *viz.* In Jurisdiction: the nature of which word *Ulpian* (speaking of the nature of a mixt Government) explaineth thus; *Quanda servata ditione juris judiciorum fit animadversio*, so as this Supreme Authority in jurisdiction is no other than Supreme Power to visit, correct, redress, Offences, or determine matters in doubt by deputing fit persons to that end and purpose according to the Law, and this is all the Supremacy that appeareth to me belonging to the Crown in these times.



## CHAP. XXXVI.

### *Of the Power of the Parliament during these times.*

WHEN the Throne is full of a King, and he is as full of opinion of his own sufficiency and power, a Parliament is looked upon as an old fashion out of fashion, and serve for little other, than for present shift, when Kings have run themselves over Head and Ears: A condition that those of that high degree are extremely subject unto, but where the Crown is too heavy for the wearer, by reason of infirmity, the Parliament is looked upon as the chief Supporters in the maintaining both the Honour and Power of that Authority, that otherwise would fall under contempt: A work that must be done with curious touch, or a clear hand; or they must look for the like Censure to that of a King to a great Lord that crowned him. My Lord, I like your work very well, but you have left the print of your fingers upon my Crown: Such was the condition of these times, wherein a Child and two Woman are the chief, but ever under the correction and direction of the Common Council, in matters of common concernment. Two things declare the point, the course of the Title of the Crown, and the order of the powers thereof.

The Title ever had a Law, which was at the Helm, although diversly expounded. Kings ever loved the rule of Inheritance, and therefore usually strained their Pedegree hard to make both ends meet, though in truth they were guilty oftentimes to themselves, that they were not within the degrees: *Bodin rep. l. 6.* The people ever loved the Title of Election, and though ever they joyned it to the Royal blood, and many times to the right Heir, to make the same pass more current without interruption of the first love between them and their Princes; yet more often had they Kings that could not boast much of their birthright, in their first entry into their Throne: Of three and twenty;

twenty Kings from the Saxons time; four of the former had no Title by inheritance; the two *Williams*, *Henry* the First and King *Steven*; of two others, *viz.* *Henry* the Second, and *Richard* the first had right of Birth, yet came in by compact. The Seventh which was King *John*, had no Title but Election. The Eighth, *viz.* *Henry* the Third came in a Child, and contrary to compact between the Nobility and the French *Lewis*; the Ninth and Tenth succeeded, as by unquestionable Title of descent, yet the Nobles were pre-engaged. The eleventh, which was *Edward* the Third, in his Entry eldest Son but not Heir, for his Father was alive, but his Successor was his Heir: it's true, there were other Children of *Edward* the Third alive, that were more worthy of the Crown, but they were too many to agree in any but a Child, that might be ruled by themselves. Three next of the ensuing Kings were of a collateral line. There two Successors, *viz.* *Edward* the Fourth, and *Edward* the Fifth were of the line, yet *Edward* the Fourth came in by disseisin, and *Edward* the Fifth by permission; *Richard* the Third, and *Henry* the Seventh were collateral to one another, and to the right blood, *Henry* the Eighth, though when he was King might claim from his Mother, yet came in as Heir to his Father. And if *Edward* the Sixth was right Heir to the House of *York* by his Grand-Mother, yet cannot the Crown be said to descend upon the two Sisters, neither as Heirs to him, nor *Henry* the Eighth, nor to one another, so long as the Statute of their illegitimation remained, which as touching *Queen Mary*, was till three Months after her Entry upon the Throne, and as touching *Queen Elizabeth* for ever; for that *Virago* provided for her self, not by way of repeal (as her Sister had done) but more tenderly regarding the Honour of her Father and the Parliament, than to mention their blemishes in Government, by doing and undoing: She over-looked that Act of *Henry* the Eighth, and the Notion of Inheritance, and contented her self with her Title by the Statute made by her Father in his thirty Fifth year, which to her was a meer purchase, and was not ashamed to declare to all the World, that she did have and hold thereby, and

28 H 8. c. 7.  
 1 Mar. Sess 2.  
 cap. 1.

35 H. 8. cap.

and that it was high Treason for any Subject to deny, that the course of the Crown of *England* is to be ordered by Act of Parliament. And this power did the Parliament exercise, <sup>13 Eliz. c. 1.</sup> not only in ordering the course of the Crown to Queen *Mary* and Queen *Elizabeth*, but during the Reign of Queen *Elizabeth*, so far as to disinherit, and disable any person who should pretend Right to the Crown, in opposition to the Right of Queen *Elizabeth*; and upon this point only did the whole proceedings against *Mary* Queen of *Scots* depend, who claimed <sup>Thuan. vol. 1. lib. 20.</sup> to be, and doubtless was Heir unto *Henry* the Eighth, after the determination of his Right Line, and yet she was put to death for pretending Right by the Common Law, in opposition to the Act of Parliament. True it is, that this Doctrine doth not down well with those that do pretend to Prerogative, aided (as they say) by the Act of Recognition, made to King *James*, and the Oaths of Supremacy and Allegiance, <sup>1 Jac. cap. 1.</sup> which do make much parly concerning Inheritance and Heirs: Nevertheless it is as true, that the Act of Recognition made no Law for the future, nor doth the same cross the Statute of <sup>13 Eliz.</sup> nor doth it take away the power of the Parliament from over-ruling the course of the Common Law for after Ages. Nor do the Oaths of Supremacy and Allegiance hold forth any such Obligation unto Heirs, otherwise than as supposing them to be Successors, and in that relation only. And therefore was no such Allegiance due to *Edward* the Sixth, Queen *Mary*, or Queen *Elizabeth*, until they were actually possessed of the Crown, as may appear by the Oath formed by <sup>35 H. 8. cap. 1.</sup> the Statute of *Henry* the Eighth, touching their Succession. Nor did the Law suppose any Treason could be acted against the Heirs of *Edward* the Sixth, Queen *Mary*, or Queen *Elizabeth*, until those Heirs were actually possessed of the Crown, <sup>2 Eliz. 6. c. 11. 5 & 6. E. 6. cap. 11.</sup> and so were Kings and Queens, as by express words in the several Statutes do appear. Nor did the Recognition by the Parliament made to Queen *Elizabeth*, declare any ingagement of <sup>1 & 2 Phil. & Mar. cap. 10. 1 Eliz. cap. 6. 1 Eliz. c. 3.</sup> the people to assist and defend her, and the Heirs of her Body otherwise than with this Limitation, *Being Kings and Queens of this Realm*, as by the Statute in that behalf made doth appear.

And

And lastly, (had those Oaths been otherwise understood) the Crown had by the virtue of them been pre-engaged, so as it could never have descended to *Queen Mary*, *Queen Elizabeth*, or *King James*, but must have remained to the Heirs of *Edward the Sixth* for ever.

Secondly, the same power that the Parliament exercised in ordering the course of Succession in the Crown, they exercised likewise in determining and distributing the Powers and Privileges belonging to the same : For these Times were full of Novelties. The Crown had formerly fitted a Childs head more than once, but is never tried to fit a Womans head since the Saxons Times till now, that it must make trial of two. *France* might afford us a trick of the Salique Law, if it might find acceptance. And the unsettled state of the people, especially in matter of Religion, might require the wisest man living to sit at the Helm, and yet himself not sufficient to steer a right course to the Harbour. Nevertheless, the Parliament having the Statute of *Henry the Eighth* to lead the way, chose rather to pursue a Rule than to make one, and soon determined the point, viz. That the Crown of *England* with all the Privileges thereof equally belong to a Woman in possession, as to a Man or Child. A bold Adventure I say it was ; but that *Henry the Eighth* was a bold Leader, and yet the bolder it was, if the consequence be considered : For *Queen Mary* as a Woman, brought in one new Precedent, but in her Marriage a worse, for she aimed not only at a Foreign blood, but at a Prince in Power and Majesty exceeding her own, and thereby seeking advancement, both to herself and her Realm, indangered both. The matter was long in debate between the Spanish and English, and now had busied their wits about ten years, at length a Supremacy is formed suitable to the Lord and Husband of *Queen Mary*, that could not be content to be one inch lower than her self. *Philip* had the name of a King, and precedency, and in many cases not without the Allegiance of the English. Their offences against his person equally Treason with those against

1 Mar. Parl.  
cap. 1.

Steiden.

1 Ph. & Mar.  
Parl. 2 c. 10.

and in many Cases not without the Allegiance of the English. Their offences against his person equally Treason with those against the Queens own person; and indictments run, *Contra pacem, & coronam D. Regis & Regine*. That in some Cases he participated in the Regal Power may appear, in that by the Articles, he was to aid the Queen in the Administration of the Kingdom; he joyned with the Queen in the Royal Assent, and in Commission, Letters-patents, and in Writs of Summons of Parliament, as well as others; yet in the words the Crown is reserved only to the Queen, and she must Reign as sole Queen. Now if the King had broken this Agreement, either the Parliament must over-rule the whole, or all that is done must be undone, and *England* must bear the burthen. A Queen Regent is doubtless a dangerous condition for *England*, above that of an Infant King, unless she be married only to her people.

This was observed by Queen *Elizabeth*, who therefore kept her self unmarried: nor did the people otherwise desire her Marriage, than in relation to Posterity. Few of them liking any one of their own Nation so well, as to prefer him so highly above themselves, and fewer any Foreigner. This was soon espied by Foreign Princes; and the Queen her self perceiving that she was like to receive prejudice hereby in her interest amongst them, signified by her Embassadors, that she never meant to stoop so low as to match with any of her Subjects, but intended to make her choice of some Foreign Prince, who neither by power or riches should be able to prejudice the interest of any of her Neighbouring Princes. A pretty Complement this was to gain expectation from those abroad, and better correspondency thereunto. Upon this ground divers Princes conceived hopes of more interest than by trial they could find. And the Archduke of *Austria* began a Treaty, which seemingly was entertained by her, but her Proposals were such as silenced all those of the *Austrian* Interest for ever after, viz.

1. That the Romish Religion should never be admitted into England.

Qq

2. That

2. That no man that she married, should ever wear the Title of King.

3. That no Foraigner should ever intermeddle in the Rule and Government of the Church or Common-wealth, nor in the Ministry of the Church.

4. That if he survived the Queen he should never challenge any Title or Interest in the Government, or any Possession in England.

5. She would never marry any one that she might not first see.

So as either she aimed at some inferiour Prince, that durst not look so high, or else she did but make semblance till she was nigh forty years old: and in all declared that she liked not her Sister *Maries* choice.

To these two Powers of Determining and Distributing, I shall add a third of Deputing, which the Parliament exercised as formerly it had done. *Henry* the Eighth had in Ecclesiastical matters exercised a Power beyond the Law, and yet by Parliament had provided positive Laws, by which the same ought to have been ordered; these were also confirmed in *Edward* the Sixth's time, with some Additional. By these, particular Commissioners were appointed for the making of Ecclesiastical Constitutions; and the King himself had a power of Episcopofactory, without *Conge deslire*. They likewise limited the power of Ecclesiastical Courts, altered their Process, reformed their Censures, even that grand Censure of Excommunication it self. The like, or much more may be said of their deputing power in Civil Affairs, as well by enlarging the King's power, as in abridging the same: for whereas some of the Successors of *Henry* the Eighth, had power by virtue of his Letters-patents, after twenty four years of age, to annul any Act of Parliament by them made before that age. In the time of *Edward* the Sixth, notwithstanding the *Proviso* of that Law, and although *Edward* the Sixth was not then twelve years old, yet the Parliament repealed all, and restored to *Edward* the Sixth only that power for the time to come, but not to any of his Successors; and whereas *Henry* the Eighth had gained to himself and his Successors a Legislative Power by Proclamation; the Parliament

in

3 & 4 E. 6.  
cap. 11.

1 Eliz. c. 1. & 1.

1 Edw. 6. c. 1.

1 Edw. 6. c. 2.

5 & 6 E. 6.

c. 1.

5 Eliz. c. 20.

1 Edw. 6. c. 11.

in *Edward* the Sixth's time took the same quite away, and reduced Proclamations into their former sober posture. The like may be observed of the Power of the Parliament, in ordering the Lives, Members and Estates of the People in matters criminal; and in making and altering Courts of Justice, and bounding their Power, altering their Process, abridging their Terms for Judicature, reforming Errors in pleading, amending common Conveyances and Assurance, as in passing Fines with Proclamations; their course in County Palatine; Limitations of Prescription; fraudulent Deeds; Recoveries by Collusion, &c. in all which the Crown had no power, but in and by the Parliament. Many particulars more might be added, if the matter so required; for the Statutes are more full in these later Times than formerly, and may soon lead us beyond a just period in so clear a matter.

1 *Edw. 6. c. 11.*  
7 *Edw. 6. c. 2.*  
1 *Mar. Seff. 2.*  
c. 10. & 12.  
1 *Edw. 6. c. 7.*  
1 *Edw. 6. c. 10.*  
3. c. 28.  
5 & 6. c. 26.

## CHAP. XXXVII.

### *Of Jurisdiction Ecclesiastical in these last Times.*

IN the general, and in relation to the Foreign Jurisdiction of *Rome*, it was like a Child in an Ague, under Fits of Heat and Cold; but in it self under the Prelacy, still growing in Stature, though not in strength. *Edward* the Sixth came in like a storm that tore up Episcopacy by the Roots, yet a Top-Root remained intire with the stock, bearing shew of a kind of Divinity, that though bared of the old Soil of the Papacy, yet transplanted into the new Mould of Royalty, soon conveyed a new life, which made the stock still flourish, and grow into a better condition than formerly it had. Their Legislative Power in matters concerning their own interest, though in outward view seeming their own, yet was doubly disturbed from the Pope and the King, who, though many times opposed one another, yet evermore were both of them in opposition to the Church, and with the greater bitterness by their

own mutual Emulations. But now the Church is come under the control, of only one that joyned with it for their mutual interest, as being both of them imbarqued in one and the same Ship.

Two things concurred to the furtherance hereof.

First, the Times were tender, and scarce able to digest the change of Worship (now patronized by *Edward* the Sixth) much less able to digest the change of Government, if the same had been undertaken in a different way from what it was formerly.

Secondly, the Times were also dark, and few saw the bottom of Prelacy, but lodged all the prejudice in the persons that managed that calling; and certainly they had the less occasion to doubt of their own judgement therein; because *Edward* the Sixth had the good providence of God to lead him to make use of such men in that place, that were meek, and holy, and themselves attempted in the fire of Persecution, and therefore more tenderly affected to others in that condition; and these carrying themselves like tender nursing Fathers in their places, wrought in the people a good opinion of their places, and that Form of Government for their sakes; yet even in those first Times of Reformation, somewhat appeared in that very quintessence of Episcopacy; in matters about Ceremony and Conformity, that might have taught wise men to beware. Upon such grounds as these it went well with Episcopacy in these first Times of Reformation, but ill with the Church in the issue. That Prelacy was a Gainer by the change in *Henry* the Eighth's time, hath already appeared; and that it still gained, may further appear, in these ensuing Considerations.

First, whereas formerly Bishops were regardent both to the Crown and Presbytery (for so may the Dean and Chapter be accounted) in the point of Election by *Conse deslire*; now they are made the birth of the King's own breath, which thing was never deduced from the ancient Right of the Crown (saving due honour to the air of the Preface of the Statute) for in the best Times it never had more than a power of investiture:



vesture : but from the necessity of the times so corrupted, that Deans and Chapters generally were of the Roman Spirit, and gave little hope of good Elections by themselves, besides the state of Learning and Holiness, was now at the low water mark, so as little supply being looked for to begin the work of Reformation from beneath, they began above, and so it proved but a weak building, for the longer time. And thus a lesson is left to future Parliaments, that in Cases of Reformation they are not to be strictly holden to Rules of Law or Precedent.

Secondly, the Prelates hereby had their Authority confirmed by Act of Parliament, and so were now built upon a foundation that formerly did hang only upon a pin of power from Rome : For Jurisdiction without Authority is but a dropie that brings inevitable consumption in the conclusion. And thus the Prelacy are enabled to hold Courts without contradiction, and directed in their Process, who formerly had a good Title to either, in that course that they held the same.

Thirdly, though their Jurisdiction was defined by the Statutes, yet in larger bounds than ever the Statute Laws formerly noted ; and in what they claimed power, they did it not altogether upon Civil Right, but still kept an awful regard to their Persons and Power, as under the sway of a Divine Donation, and therefore as in those matters to them, by the the Statute allowed, they did proceed in the Name and under the Seal of the King, so in other things of Collation, Institution, Induction, Orders, Excommunication, and such like, they proceeded in and under their own Name and Seal ; and which was a Crown to all the rest, power is still given to the Archbishop of *Canterbury*, in cases of faculty and dispensation, to proceed under his own Seal, and not the Kings, as if it were a power independent upon the Crown, and belonging unto the man, neither by Statute, nor Commission, but coming by some secret Influence from the very place it self ; although in the clear sense it is no more than a power of *Non obstante*, in the point of obedience to the Canon.

Canon Law, which by a Statute in *Henry the Eighth's* time, is declared no Law : But let this pass as a Mole in this fair face of Church Government. The Prelates are now become of the Vicinage, *Probi & legales homines*, they have their jurisdiction by Law established, what they lose in breadth, they gain in height and goodness of their foundation : Yet their Attire looks ill favouredly in *Queen Maries* eye, she will have it of the old cut again, and though Cardinal *Poole* was well seen in the Roman fashion, yet when he had done all, he did no more than shape a garment to serve the present Interlude, neither fit to the body, nor easie to be worn, and therefore after four or five turns upon the Stage it is thrown away. Nevertheless, during the time that *England* was thus dancing the *Italian* measure, Prelacy in *England* held its own Domestick garb so well, that neither *Poole* (being of English blood, not much distant from the Crown, and then also holding the Chair Legatine, as little inferiour to the Throne) would not impose too much, nor *Queen Mary*, a Woman of a stout Spirit, yield farther than she liked : By means whereof, the Prelacy looking no more to *Rome* than the power in Appeals ; and therein little more than the bare Title, played *Rex* all the while with the people, under colour of Heresie and the Canon Law : Which now was again made their Rule : and thus as touching their Election and Jurisdiction, they were as before. For *Queen Mary* did nothing but by single Repeal. But *Queen Elizabeth* being true English, both by Father and Mother, liking not this retreat, faced about, routed the Roman fashion out of fashion ; put Prelacy to its close guard, and received it upon capitulation, not only to mercy but favour, and so became her Vicar to exercise her Ecclesiastical Jurisdiction, *Per saltum* : For it is hard to find by what steps they gained this pitch : *Henry the Eighth* was Supreme Head by submission of the Clergy, by Resumption, and by Act of Parliament ; and as such the power of Bishops formerly derived from *Rome* ceased, and *Henry the Eighth* after restored it anew, and settled the same by several Acts of Parliament ; which *Edward the Sixth* confirmed with divers additional Acts of further benefit to them, as hath been already

already noted. But Queen *Mary* altered all by repeal of the former Laws, and so left all in Remitter, as before the alteration by *Henry* the Eighth, and did neither give or grant any jurisdiction to the Pope. Last of all comes Queen *Elizabeth*, and by repeal and resumption possessed her self of jurisdiction Ecclesiastical, and granted Election of Bishops by *Conge deslire*, but never granted to the Bishops Ordinary jurisdiction by any express act, other than permission of them to continue in their former course, notwithstanding that the foundation of their jurisdiction had been altered twice, and so it will be difficult for it to hold by prescription or custom, or any other way than by a kind of Divine Right, which began to be pretended; yet to this day could never be made evident to the World. Whatever the ground was, the thing is plain, that Prelacy in Queen *Elizabeths* time had this Honour allowed thereunto, that it was upholden by Election from Ecclesiastical men, and held its jurisdiction, as from it self, and in the name of Bishop as Ordinary; and the power of Excommunication by a saving in the Statute-Law, and not by express donation; notwithstanding the late Precedent in the time of *Edward* the Sixth to the contrary.

Secondly, the Rule of this Jurisdiction was no less at large, for the Canon Law was determined by *Henry* the Eighth, and *Edward* the Sixth, and was not revived by any Act of Parliament, by Queen *Mary* or Queen *Elizabeth*, who neither pursued the *Medium* of the thirty two Commissioners, nor settled other Rule, but a few Canons, which (after some time) by Queen *Elizabeth* and her Clergy were agreed upon, but never confirmed by Act of Parliament: And so could never bind the Subject, and which in general set forth a kind of form of Church-policy, yet no fashion of jurisdiction, or rule of proceedings in the Ecclesiastical Courts, but in such Cases left them to the Canon Law, which was hidden in their own breasts, and could be made strait or wide as they pleased.

Thirdly, their Censures now grew more sharp; for whereas  
at

1 Eliz. c. 1.

at the utmost formerly they could do no more but imprison, or deliver over to the Secular Power, and that only in case of Heretic, and yet had scarce ground of Law for what they did; now they have an additional power, to fine and imprison in Cases of inferiour nature, and so can reach all that a man hath, even to his skin; nevertheless this was not annexed unto the ordinary Jurisdiction, but given by extraordinary Commission, called the *High Commission*, wherein, though many others were named, yet the Clergy and Canonists did the work, the rest being but in nature of a reserve to them, in case they were put to the Rout. The power of these Commissioners was to execute the Queens Jurisdiction in Causes Ecclesiastical, so as the Bishops are doubly interested in this work; one way, by supposed Commission from God, as Ordinaries within their own Diocess only, and so may proceed to Excommunication or Deprivation; the other way, by Commission from the Queen, as Members of the High Commission (for so many of them were such as the Crown would please) and so they might fine and imprison. They might and did, I say, by their Commission, but not by the Statute that gives Authority thereto, and therefore cannot be said to be done legally.

Fourthly, besides the contracted power of making Canons in the Convocation, by the power of the Royal Assent; the Queen had a power of making Laws by their consent, in matters of the criminal part of the Worship of God.

1 Eliz. c. 1.

This might be tolerable for the Life of one Queen, who might be presumed, would (if she lived a few years) settle all things; but to subject the consciences of all the people to the opinion of one Metropolitan, that might opinionate strange things, and that the Successors of the Queen should usurp this as a Flower of the Crown, to determine what is for God's glory in such cases, and to be always altering and patching up a Form, as he and his Metropolitan, or one of them alone shall think meet, is neither commendable upon any grounds of Divinity or humane Policy.

Now

Now amidst the flourishing Estate of Prelacy, it's no wonder if the Churches be no Gainers, but like Plants spending their Natures in luxuriant branches, either are over turned by the next blast of wind, or do wither upon the least change of Skie: That the whole ordering of the Church Affairs rested originally in the Parliament, no man can question, considering whatever the Queen did, or had therein, was from the power of Acts of Parliament. And that the power of Excommunication it self, notwithstanding that the Church held it by way of reservation or saving, and not by donation from the Parliament, by any express Act, yet was that saving with such Limitations, as that it relieved but a lame power in comparison of what it claimed, and exercised in former Times; for whereas formerly the Church-men had the Writ, *De Excommunicato Capiendo*, at their own beek; now it will not come but upon Articles and certain Conditions.

1. In cases of Heresie.
2. Of deserting of the Sacrament.
3. Deserting of publick Worship.
4. Maintenance of Error.
5. Incontinency.
6. Usury.
7. Simony.
8. Perjury.
9. Idolatry.

In other matters the Spiritual Sword must find or make their own way, or else be quiet.

Secondly, the Church was now no less under the Chair and Throne, than under power of the Parliament; nor is it a wonder, if it could not thrive when it was so over-dropped: for Prelacy by the King's arms is lifted up so high above the other Clergy, that the rest of the Clergy are as much underlings to the Prelacy, as the Prelates are to the King: They dare not offend the Crown, lest they should lose their Honours, nor the inferiour Clergy them, lest they should lose their Livings and Liberties; and so the Prelates

Speak the sense of the Clergy, and make the Crown their Oracle. Thus in the Church-matters the Crown is all in all.

## CHAP. XXXVII.

### *Of the Militia in these later Times.*

IT cannot be denied, but as in the sober Government of this Nation, there is a Supremacy of Command, so also in the rudest Times of War; and wheresoever the same is settled, there must the *Militia* also be.

The word *Militia* is a general notion, sufficient enough for a name or title, but not to define the thing, I take it for nothing else, but the Government of the Common-wealth, when it is in anger, or War, or in order thereunto. It consisteth in the raising, arming, ordering and paying of the Soldiery. The Title of the Supreme Power in all this work hath been of late put to the question, and brought us to this sad condition of trial by Battail, and by Fighting, to find out who had the chief power to fight: a Lesson that might have been learned from former Generations foregoing, at a far cheaper rate, when *England* is well in its wits. Where the Law of Peace is settled, there also is the Law of War; and in what condition the Crown standeth, in relation to the Legislative Power, in time of Peace, may be seen in the foregoing Discourse. In War he is the peoples General by his place; yet if any impediment do befall, either by natural Disabilities, or civil, to render the person incapable of the managing of the Service, there is no question but the people may order the matter as they please. Examples hereof these times are full, wherein we have a Child, a Virgin, and a Married Woman to sway the Work, all of them in a very unmeet condition for such a Trust, and yet by the help they had, they managed it well enough. The power of him as King or General in the Army, is all one; but before it is imbodyed, as a King only, he may do some things in order thereto, according

ing to the Law and Custom of the Nation; yet this falls under a double consideration of the time and occasion. In the recess of the Parliament, he is the first mover, and ought to move by the advice of his Council, if occasion do provoke to Arms; but if the same befall the Parliament then sitting, no History or Record do mention that ever he moved but by their concurrent advice and direction. The occasion either provoketh offensive or defensive War with other Nations, or with the people of his own Nation, in the case of Insurrection. Examples of War with other Nations, that may be called offensive Wars: we have but two, one in *Edward* the Sixth's time with *Scotland*, and which was but in pursuance of a War begun by his Father, and wherein the Kingdom stood engaged, in a case that concerned the publick good and safety, viz. the Marriage of their King refused after promise made. The other was in the time of *Queen Mary* with the French, which somewhat reflected also upon the publick safety, but more upon the dishonour of the same. In none of these did either of the Supreme Powers array, or raise men by Prerogative, but only such as were Voluntier in that Work. And because the people were ill principled in *Edward* the Sixth's time, in regard of the change of Religion, he was induced to hire Foreign aid out of *Germany*. The Wars in the time of *Queen Elizabeth* were in order to the defence of this Nation, being ever under a malignant Aspect from abroad, especially from *Spain*, in *Ireland*, *France*, and the *Low-Countries*; yet were these Wars served only by Voluntiers, nor did any Commission give power of impressing men to serve against their wills in any Expedition made to any of those places, as the Commissions upon Record do testifie. If any Levies of Men were otherwise made, or compulsory means used for such ends, they are to be reckoned up amongst the *errata*, whereof the Parliament took no notice, in regard it saw the ends and issues of such reflections in Government to be successful and honourable, and that all was done by Council, and a Woman popularly affected, and therefore less feared invasion upon their Liberties; or otherwise they are to be imputed to

the condition of those places, being Members of the Commonwealth ; as the cautionary Towns in the *Low-Countries*, and the Irish Plantations were , and so beset under another consideration of a defensive War, in case of invasion and common danger thereby, or by intestine broils, during which condition, as it is the King's duty to levy and array men, so is it the duty of the people to be ready to assist one another in all such exigencies , and to defend the publick Liberty ; nevertheless , these Arrays are not left wholly at the Will of the King, but to discretion of the Council, how far the same shall extend : For never were general Arrays made , where but one Coast was in danger, and where no conquest is in pretence, but only piracy or plunder. But if the disease were general, as in the year 88. the Array was general, and yet it was of none, but those that were of the Trained-bands, besides such as were Voluntier.

Secondly , the arming of these men was also diversly , there was no general Rule or Law for the arming of men since the time of *Edward* the First , to the time of *Queen Mary* , but the Statute at *Winton* ; the course of Tenures, I mean of such men as were of the Militia of this Kingdom : So as when they were raised , they were raised in their own arms : But for such men as passed the Seas for Foreign Service, as they were Voluntiers, or sent over by the Parliament, these were armed according to special contract. But *Queen Mary* having gotten a safe reserve from *Spain* upon all adventures, and a strong Interest amongst the people, by upholding the Catholick party , made no bones to innovate in the point of arming of the Militia, although it cost the people much more than was imposed upon their Ancestors. The pattern hereof was taken from the Spanish Cabinet, the *Queen*, being loth to be inferiour to her own Husband, in bringing as much strength to him as he to her, and both of them willing enough to appear potent in the eyes of *France*, that then stood in competition with them both : A yoke it was, yet neither the King nor Queens Will, but the Parliamen put it



it on, and ere an age expired was cast off again : For the better understanding, see it in this Scheme.

Per Annum	Lances	Light Horse.	Corsets	Bowes	Hacquebuts	Bills.
1000 l.	6	10	40	30	20	* 20
1000 marks.	4	6	30	20	10	10
400 l.	2	4	20	15	6	
200 l.	1	2	10	8	3	
100 l.		1	5	4	2	
100 marks.		1	2	2	1	
40 l.			2	1	2	
20 l.			1	1	1	
10 l.			A Coat of Plate.	1	1	
5 l.			A Coat of Plate.	1		

*Goods.*

1000 marks.	1	1	2	4	3	
400 l.		1	1	2	1	
200 l.			1	2	1	
100 l.			1	2		
40 l.			Two Coats of Plate.	1		1
20 l.			One Coat of Plate.	2		1
10 l.				1		1

The Lances were to be compleatly harness'd, or the one half of them, the Corcellets furnish'd with Coats of Mail and Pikes: the Bows with an Iron Cap, and a Sheaf of Arrows. The Hackbuts with Sallets; all which was to be over and besides such Arms as men were bound unto by Tenure, or Covenant with the Landlord, or by virtue of the Statute 33 H. 8. c. 5. besides Town-ships, which were charg'd with joynt-Arms; Annuities and Copy-holds were charg'd as goods. If the Arms were lost in the Service, the owner must make them good again: The defaults were punishable with fine by the Justices of the Peace, who had the view, and might present them at the Sessions to be proceeded upon as in other Cases. Here is provision enough, yet not as the Arms of the Militia of the Kingdom, but as a Magazine in the hands of every particular man, and as his proper goods, to be employed for the publick Service, either upon sudden invasion in a defensive War, or when the Parliament shall send them abroad. And yet it is also a rule unto the Crown against arbitrary Assessments upon discretion, from which it cannot recede if it mean to do right. It might now very well stand with the Justice of Queen Elizabeth, to grant Commissions of Array, *Secundum formam Statutorum*, and do hurt to no man; it's true, her Commissions of Lord Lieutenantcy wanted that limitation in words, yet they carried the sense, for if the Crown were bound by the Law, the Lord Lieutenants were much rather, but the danger arose after the death of Queen Elizabeth; for when King James came to the Crown, under colour of pleasing the people, and easing them of a burthen, he pleas'd himself more; and made the yoke upon the people much more heavy in the conclusion; for where no declared Law is, there the discretion of them that have the care lying upon them must be the Rule; and thus came the Scottish blood to have pretensions to a greater Prerogative than all their Predecessors had, upon this supposal that the Statute of Queen Mary took away all former Laws of that kind, and then the taking away of the Statute of Queen Mary takes away all declared Law as to that point: But more truly it may

may be inferred, that if all Statute Laws be taken away, then the Rule of Tenures at the Common Law must remain in force and no other. Nevertheless, this Statute of *Queen Mary*, though in force for the present, was not a general Rule for Arms in all places of this Nation; for the Marches of *Scotland* were a peculiar jurisdiction, as to this point. They stood in more constant need of Arms, than any other part of this Nation, in regard of their uncertain condition, in relation to their Neighbouring jurisdiction; and therefore were the Farms of these parts generally contracted for, upon a special reservation of Arms for each particular, which being now decayed, are again reduced by *Queen Elizabeth* to their ancient condition in the time of *Henry* the Eighth. <sup>23 Eliz. c. 9.</sup>

A second thing which may come under this general consideration of arming, is, the arming of places, by making of Forts and Castles; which was not in the immediate determinate will of the Crown to order as it pleased, for though they may seem to be means of Peace and present safety, yet they are Symptoms of War, and in the best times are looked upon with a jealous eye, especially such as are not bordering upon the Coasts: Because that Prince that buildeth Castles within the Land is supposed to fear the Neighbourhood. This was more especially regarded in the days of *Philip* and *Mary*: For when that marriage was to be solemnized, it was one of the Articles to provide for the safety of such Forts and Castles, as then were maintained, to the end they might be preserved free from usurpation, for the Use, Profit, Strength, and Defence of the Realm; only by the natural born of the same. And afterwards when occasion was offered, for the building of more of that nature; a new power is given to King *Philip*, and Queen *Mary*, to re-edifie or make Forts and Castles, which must be executed by Commission to the Legies for ten years, and only within the Counties bordering upon *Scotland*, and these particularly named in the Statute, so as the Crown had not power to build in all Cases, nor to any end they pleased. nor to place therein, or betrust the same to whom it would, Nor.

<sup>1</sup> Mar. Parl.

<sup>2</sup> cap. 2.

<sup>2</sup> & <sup>3</sup> Phil. &

Mar. cap. 1.

2 E. 6. c. 16. Nor yet had *Edward* the Sixth that absolute power, although not ingaged in Foreign Interests, as his Sister *Mary* was; and therefore whereas *Castellanes* had been made for life, by Patent, and so the absolute power of the Crown was barred in the free disposal of the same during such time. The Parliament gave the King power to remove such as were not liked, or thought not faithful to the Publick Interest, although they gave no cause of Seizure by any disloyal Act. The like also may be observed of the Ships and Ordnance; for they also do belong to the State, as the Jewels of the Crown, and therefore upon the Marriage of *Queen Mary*, they also are by Articles preserved and saved, for the use, profit, strength and defence of the Realm, by the natural born of the same.

4 & 5 Phil. & 2 Mar. c. 3. Thirdly, as touching the ordinary of the Soldiery, the matter is not much to be insisted upon, for little doubt is to be made, but that power that raiseth them also ordereth them to the same ends that they are raised: and therefore as the sole power of the Crown doth not the one, so neither doth it the other, but in cases formerly mentioned; and yet in no case, though the War be never so absolutely defensive, and the Soldiers raised by the King's own and only Power; yet had not the King absolute Authority, and arbitrary Power, in the ordering of them when they are raised, but he must so behave himself to them, as to Free men, according to the Laws made by themselves in their Representative in Parliament, and therefore are particular Laws made to that end, against undue levying and discharging of Soldiers, and Defaults in paying of them; as also against the Soldiers departing from their Service without License, or wasting their Arms, and such as wilfully absent themselves from 2 & 3 E. 6. c. 2. 4 & 5 Phil. & 2 Mar. c. 3. 5 E. 6. c. 11. 14 Eliz. c. 1. Musters; as also for the preserving the Castles, Forts, Ships and Munition for War, from being with-holden from their due use, or from burning or destroying.

Lastly, as touching the charge of the War, and pay of the Soldiers. It's evident, that in all offensive Wars the Soldier was paid by the Crown, although they might be said in some

some manner to be in order to the defence and safety of the Nation; nevertheless, where the same was so apparent to the people, it was the common course in these times to have often Parliaments, and often Subsidies, which were no less in a good measure satisfactory to the Crown for the Charges of the War, than Testimonies of the peoples good Acceptance of the Government of Affairs, and so accepted at their hands: The particular Records will warrant all this. For of all the Wars in these times (that of 88 excepted) not any of them were ever managed at the peoples charge by Contribution, but by Retribution. So were these times, wherein the people looking upon the Crown, as under a kind of infirmity of Childhood or Womanhood, did therefore bear a kind of compassionate regard thereunto, without jealousy at Prerogative, could condescend and allow the Crown its full Grains, and somewhat more, yea, more than was meet for some other Prince to desire, or the people to give up; and yet more happy were they, wherein the Crown knew no interest but in dependance upon the peoples good, and so understanding were rightly understood.

## CHAP. XXXIX.

### *Of the Peace.*

**I**T is but little that can be said of peace in these times, wherein so little freedom was found from Foreign pretensions, and intestine irregularities, or both; and yet the people were never more resolved against the former, nor secure against the latter, and had God to Friend in all. But most apparently was this observable in the times of Queen *Elizabeth*, whose Government took up four parts of five of these times, whereof we now treat. She was a compleat Conquerour of War and Treason, and therein the true Inheritor of the Face of her Grand-Father *Henry* the Seventh, with advantage, for she out-faced all dangers by her only presence, having thereof had more experience

perience than any Princes that ever possessed her Throne; yet she was wise enough to beware against the future; considering her condition to be the last of her Line; that the next behind her was rather likely to trip up her heels than support her Train; that the Pope narrowly watched every opportunity; the distance between him and the Throne, being no greater than the breadth of her only Person. It may well therefore admit of excuse, if the Statute of the 25 of Edward the Third concerning Treasons did not give satisfaction, although\* therein if she were solicitous, her Subjects were more. Some kinds of Offences were made Treason by Statute-Laws, which formerly appeared not such, because they appeared not at all; and yet in the opinion of her people, the Queen was too slack in the making, and more slack in the execution of them. The people had engaged themselves deeply against the Queen of Scots, and it was not safe for them to go back; they go yet deeper, and without any positive Authority, leading the way, they enter into an Association amongst themselves for the Queens safety; and it was well liked by the Queen, because she knew it was well meant, although by some it was mistaken: nevertheless to take away all Exception, a Law is made in pursuance thereof, and so the Work is reduced under an ordinary rate, though the publick danger was such, as might well have digested an extraordinary undertaking.

27 Eliz. c. 1.

I intend not to enter into the particulars of these Treasons of the new stamp, because they are but temporary, and in their ultimate reach tend only to the safeguard of the Queens person, in order to the Intentionary sense of the Statute of 25 Edw. 3. although not within the explicit words of that Law. Only this is observable, that though the times were full of malice, yet was not all malice looked upon as fatal, nor every Expression thereof Treason, or privy thereto Treason (although the Crown itself was not a little concerned therein) but reduced to an inferior degree, called *Misprision*, as if they were willing rather to construe undertakings for mistakings, and thereby over-look much of the Malignity of these Times, than to make strict inquisition into every *Punctilio* of Offence.

As

As touching Felony, the Rules were various, some were of a new Original, as that of Gipsies ; others formerly such, afterwards laid aside, are now revived with advantage, as Conjurat[i]on and Buggery : but imbezelling by Servants of their Masters Goods, made Felony for a time by *Edward the Sixth*, is by *Queen Elizabeth* made perpetual. Some Felonies are made such within a certain precinct, as Man-stealers, and other Crimes upon the Scottish Borders. Others formerly made Felony are now unmade, as that concerning Prophecies, and divers formerly protected under the refuge of Clergy, are now barred of that reserve. Such as are those that command Counsel, or hire others to commit Petty Treason, Murder or Robbery, 4 & 5 *Phil. & Mar. cap. 4*. Stealers of Horses, Geldings or Mares, 2 *E. 6. cap. 33*. Robbers of Houses, Booth or Tent, by Day or Night, 5 *E. cap. 9*. Pick-pockets, or Cut-purses, 8 *Eliz. cap. 4*. And Woman-stealers, 39 *Eliz. cap. 9*. And some Crimes made Felony impeachable, only within a certain time, and not upon a cool suit ; so as upon the whole heap of Account, the zeal of the times will appear to be more hot, by how much iniquity appeared more hainous, and that wicked men waxed worse as the times waxed better. More particulars of this nature, and of other Offences of inferiour note might be superadded ; as also of Laws, of alteration and amendment of Process and Trial, and of Common Assurance and Conveyance of Estates, of particular Revenue ; all which might be insisted upon, if need were, to clear out yet further the conclusion of the whole matter, which I hasten to accomplish, led on by a natural motion, that grows in speed the nigher is comes to its end.



## CHAP. XL.

*A summary Conclusion upon the whole matter.*

**I**N the stating of this whole account ; I shall first glance upon the natural constitution of the people of *England*, and then gather up the scattered Notions into one form, because the one doth not a little illustrate the other, and shew the same to be radical, and not by any forced inoculation.

The people are of a middle temper, according to their Climate : The Northern Melancholy, and the Southern Choler, meeting in their general Constitution doth render them ingenious and active ; which nourished also under the wings of Liberty, inspires a courage generous, and not soon out of breath. Active they are, and so nigh to pure act, that nothing hurts them more than much quiet ; of which they had little experience, from their first transmigration till the time of King *James* ; but ever were at work either in building (as before the Norman times) or after in repairing their ruines, occasioned by tempestuous pretensions from *Rome* and Foreign Princes, or by Earth-quakes of Civil Contention about the Title between the two Houses of *York* and *Lancaster*, or intrenchments of the Crown upon the Liberty of the people. But King *James* conquering all enmity, spake Peace abroad, and sang Lullaby at home : Yet like a dead calm in a hot spring, treasured up in store sad distempers against a back Winter



Winter. Their ingenuity will not allow them to be excellent at the cheat; but are rather subject in that kind to take than give: and supposing others as open hearted as themselves, are many times in Treaties overmatched by them whom they overmatch in Arms. Upon the same account they are neither imperious over those beneath, nor stubborn against them above; but can well discern both person and time. Man, Woman or Child, all is one with them, they will honour Majesty where ever they see it. And of the twain, tender it more when they see it set upon infirmity: as if they knew how to command themselves only in order to the publick good.

Nevertheless, they love much to be free: when they were under awe of the Pope's Curse, they bore off designs by the head and shoulders; but afterwards, by watchfulness, and foresight; and having attained a light in Religion, that will own their Liberties, of them both they make up one Garland not to be touched by any rude hand, but as if it were the bird of the eye the whole body startles forthwith, the Alarm is soon given and taken, and whether high or low, none are spared that stand in their way. This they do owe to the Eastern people, from whom they fetch their Pedegree. So as the only way to conquer them, is to let them have their Liberties, for like some Horses, they are good for carriage, so long as their burthens are easie and fit loose upon them, but if too close girt, they will break all, or cast their load, or dye. And therefore *Q. Elizabeth* gained much to the Crown by fair carriage, good words, and cleanly conveyance, which was not soon discovered, nor easily parted with. But *Henry* the Eighth by height of spirit and great noise, and therefore was no sooner off the Stage, but what was gotten by the snatch, was lost by the catch, and things soon returned into their ancient posture again.

The first Government of the people before their departure out of *Germany*, was in the two States of Lords and Commons.  
The

The Clergy came not into pomp and power, till *Austins* time, and soon came to the height of a third state appendent to the former, and so continued till *Henry* the Eighth's time; then they began to decay in power, and in Queen *Elizabeths* time utterly lost the same, and so they can no longer be called a State, although they still keep state.

The two States of Lords and Commons in their transmigration, being then in the nature of an Army of Soldiers, had a General by their Election, under whom after they had obtained a peaceable settling, they named anew by the name of *Konning*, or the Wise man, for then was Wisdom more necessary than Valour. But after the Clergy had won the day, and this *Konning* had submitted himself and his people to their Ghostly Father, they baptized him by a new name of *Rex*, and so he is stiled in all Written Monuments which we owe only to Ecclesiasticks; although the vulgar held their appellation still, which by contraction, or rather corruption, did at length arrive into the word *King*; a notion which as often changeth the sense as the Air: some making the person all in all, others some in all, and some nothing at all but a complement of State. The Clergy gave him his Title in the first sense, and are willing he should have a power over the Estates, in order to their design, which then was to rule the King, and by him all his People, he doing what he listeth with them, and the Clergy the like with him. The Saxons take the word in the second sense, for though they had put upon the Common-Wealth one Head, and on that Head one Crown, yet unto that Head did belong many eyes, and many brains, and nothing being done but by the common sense; a power is left to him much like to that of the outward Members, *Ex-ecutory*.

In time of War, how unruly soever the humours be, yet must the Law be his rule; he cannot ingage the people either to make, continue or determine, any offensive War without their consent; nor compel them to arm themselves, nor command

command them out of their Counties for War, or impose Military charge upon them against their free consent, or contrary to the known Law.

In calmer times much rather, he can neither make new Law, nor alter the old ; form new Judicatories, Writs, Proceſs, Judgements, or new executions, nor inable or diſable any conveyances of Eſtates. He may ſeem poſſeſſed of more power in Church-government, yet *De jure*, can neither make nor alter Doctrine, or Worſhip, or Government in the Church : nor grant Diſpenſations, or Licenſes Eccleſiaſtical ; nor Commiſſions of Jurisdiction, other than according to the Law. And as a cloſe to all, by one Oath taken at the Coronation, he not only giveth to the people ſecurity of the Peace and good behaviour, but beareth witneſs that he oweth Allegiance both to the Law and the people, different from that of the peoples in this, that the King's Allegiance is due to the Law, that is originally from the peoples Election, but the peoples to the King, under a Law of their own framing.

This leadeth on the conſideration of a higher degree of power than that of Kings : For though Law as touching morality in the general be of Heavenly birth ; yet the poſitive Laws ariſing from common Prudence concerning the Honour, Peace and Profit of every Nation ; are formed by humane conſtitution, and are therefore called *Honeſta*, or *juſta*, becauſe by common vote they are ſo eſteemed, and not becauſe any one man ſuppoſeth them to be ſuch. The words of the Summons to the Parliament doth hold for this, *Que de communi conſilio ordinari contigerint*, and the words in the Coronation Oath, *Quos vulgus elegerit*, do ſpeak no leſs, whether they be taken in the Preterperfect tenſe, or Future tenſe, the conſequence will be the ſame : True it is that in all, Kings are ſuppoſed as preſent ; yet is not that valuable in the point of Council, which is the foundation of the poſitive Law. For as the beſt things under heaven are ſubject to infirmity ; ſo Kings either ſhort or beyond in Age or Wit, or poſſibly given over to their luſts, or ſick, or abſent, (in all which the name of a King adds little more to the Law than a ſound

found) yet all the while the Government is maintained with as much Honour and Power, as under the most wise and well disposed King that ever blessed Throne.

This is done in the convention of States, which in the first times consisted of Individuals, rather than Specificals. The great men doubtless did many things even before they saw the English shore; that *Tacitus* noteth, yet in the publick convention of all, did nothing alone till of one House they became two. The particular time of the separation is uncertain, and the occasion more: It may be the great Lords thought the mysteries of State too sacred to be debated before the vulgar, lest they should grow into curiosity: Possibly also might the Commons in their debates with the great men absent, that themselves might more freely vote without angering their great Lords: Nevertheless, the Royal assent is ever given in the joynt convention of all, but how a double Negative should rest in the House of Lords, one originally in themselves, the other in the sole person of the King, when as in no case is any Negative found upon Record, but a modest waving the answer of such things, as the King likes not, is to me a mystery, if it be not cleared by usurpation: For it is beyond reach, why that which is once by the Representative of the people determined to be *Honestum*, should be dis-determined by one or a few, whose Counsels are for the most part but Notionary, and grounded upon private inconveniences, and not upon experimentals of most publick concernment; or that the *veult* or *Soit fait*, which formerly held the room only of a *Manifesto* of the regal will to execute the Law then made (as his Coronation Oath to execute all Laws formerly established) should not be taken to be a determination of the justness or honesty of the thing: When as this Royal assent is many times given by a King, that knows no difference between good and evil, and is never competent Judge in matters, that in his opinion do fall into contradiction between his own private interest, and the benefit of the people.

However

However unequal it may seem, yet both that and other advantages were gained by the House of Lords, after the separation was once made, as many of the Ancient Statutes (by them only made) do sufficiently hold forth, which although in the general do concern matters of Judicature, wherein the Lords originally had the greatest share, yet other things also escaped the Common Vote, which in after ages they recovered into their consideration again. And the condition of the people in those times did principally conduce hereunto: For until the Norman times were somewhat settled, the former ages had ever been uncertain, in the changes between War and Peace, which maintained the distance between the Lords and their Tenants, and the Authority of the one over the other, favouring of the more absolute command in Law. And after that the Sword was turned into the plough share, the distance is established by compact of Tenure by Service, under peril of default, although in a different degree; for the Service of a Knight, as more eminent in War, so in Peace it raised the mind to regard of publick Peace: but the Service of the Plough supporting all, is underneath all, yet still under the Common Condition of Free-men equally as the Knight. Peace now had scarcely exceeded its minority, before it brought forth the unhappy birth of Ambition; Kings would be more absolute, and Lords more Lordly; the Commons left far behind seldom come into mention amongst the publick Acts of State, and as useless set aside: this was the lowest <sup>ebb</sup> that ever the Commonage of *England* indured, which continued till Ambition brought on Contention amongst the great men, and thence the Barons Wars, wherein the Commons parting asunder, some holding for the King, who promised them Liberty from their Lords; others siding with the Lords, who promised them Liberty from the King; they became so minded of their Liberties, that in the Conclusion they come off upon better advantage for their Liberties, than either King or Lords, who all were losers before their reckoning was fully made. These Wars had by experience made the King sensible of the smart of the Lords great interest with the people, and pointed

him to the pit upon which the same did hang; to take which away, a Design is contrived to advance the value of the Commons, and to level the Peerage, that they both may draw in one equal yoke the Chariot of Prerogative. The Power of the Commons in publick Councils was of some efficacy but not much Honour, for their meetings were tumultuary; time brought forth a cure hereof, the flowers of the people are by Election sent to the Representative; and so the Lords are matched, if not over-matched, the people less admiring the Lords, and more regarding themselves. This was but a dazle, an Eclipse ensues; for Kings having duely eyed the Nature of Tenure between the Lords and Commons, look upon it as an out-work or block-house in their way of approach: Their next endeavour is therefore to gain the Knighthood of *England* within the compas of their own Fee, and so by priority to have their Service, as often as need should require, by a trick in Law; as well for their own safety in time of War, as for their benefit in time of Peace: This was a work of a continuing Nature, and commended to Successors to accomplish by degrees, that the whole Knighthood of *England* is become no more the Lords till Kings be first served: And thus the power of the people is wholly devolved into the King's Command, and the Lords must now stand alone, having no other foundation than the affections of the people gained by beneficence of Neighbourhood, and ordinary society, which commonly ingratiates the inferiour rank of men to those of higher degree, especially such of them as affect to be popular. *Henry* the Seventh found out this fore, and taught his Successors the way to avoid that occasion of Jealousie, by calling up such considerable men to attend the Court, without other Wages but fruitless hopes; or under colour of Honour to be had by Kings from the presence of such great men, in their great Trains; or of other Service of special note to be done only by men of so high accomplishment. And by this means Lordship, once bringing therewith both Authority and Power unto Kings, before Kings grew jealous of their greatness, in these later days is become a meer jelly, and neither able to serve the interest of Kings (if the people should

should bestir themselves) nor their own any longer: Henceforth the Commons of *England* are no mean Persons, and their Representative of such Concernment, as if Kings will have them to observe him, he must serve them with their Liberties and Laws; and every one the publick good of the people: No man's work is beneath, no man's above it, the best Honour of the King's work is to be, *Nobilis servitus* (as *Antigonus* said to *Ælian. lib. 2.* his Son) or in plain English, Supreme Service above all and to *Var. hist. cap.* the whole. I now conclude, wishing we may attain the happiness of our Fore-Fathers the ancient Saxons, *Quilibet contentus sorte propria.* *Tacit.*

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T t 2

A Table

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A TABLE of the PRINCIPAL  
MATTERS contained in this  
BOOK.

A	Fol.	A	Fol.
<b>A</b> Betting of Felony made Felony	299	not natural	79, 89. not absolute or indefinite 82. not to the King in his natural capacity 86. it obligeth not the people to serve in foreign War 103. it is due to the person of the King for the time being 246, 279. what it is in time of War, and relation thereunto 247. Henry the Seventh, and Henry the Eighth
Administration granted to the next of the Kindred.	51	indeavoured to advance it in relation to the Crown, but effected it not	104
Admirals power from the Parliament 41. formerly under many, brought into one 42. once gained jurisdiction to the high water-mark 44. and his Power regulated by Law ibid. over Sea-men, Ports and Ships	44	Appeals in cases Ecclesiastical restrained from Rome, and given in	
Allegiance according to Law 18. vide Supremacy, the nature thereof in general 79. it's			

# The Table.

in the King's case to the Convocation, and in the cases of the people, the Archbishop afterwards to the Delegates, and were never seized in the Crown 227, 233. vide Archbishop

Archbishop hath the lawful power of the Pope in Appeals and Dispensations, Licenses and Faculties 233. the Archbishop of York loseth his jurisdiction over the Scottish Bishops 193

Arrays, Commission of Array 178, vide War

Assent of the King to Acts of Parliament, serveth only to the execution of the Law, and not to the making thereof 21

Association of the people for the common safety, before the Statute inabling the same 298

## B.

**B**astardy, not to be determined by the Ordinary before Summons to the Pretenders of Title to be heard 156

Bench, the King's Bench at Westminster abated in power by the Commissions of Oyer and Terminer, and Goal-delivery

92, 165

Benevolence, first used by Edward the Fourth 184. taken away by Richard the Third 185. taken up again by Henry

the Seventh 196

Bishops, not impeachable before the Civil Magistrate 49. their Temporalities to be neither seized nor wasted in the vacancy vide Ordinary

Buggery made Felony 299

## C.

**C**anons, their power anciently in debate 61. such as are not according to the Law are taken away 236

Castles and Goals restored to the Country 113. vide Forts and Fortifications

Chancery, once an Office, afterwards a Court 35. the power grows by Act of Parliament 36, 162. the manner of the Proceedings 38. Keeper of the great Seal increaseth in power 162

Chancellor elected by the Parliament 39

Cheshire made a Principality 11

Children carried into Cloysters remedied 163

Clergy, privileged from Arrests 52. discharged of purveyance and free quarter 52. their Temporalities in question 63. the Commons love not their persons 147. their first declining from Rome in the matter of Provisors 150. they gain free process in

# The Table.

*in matters Ecclesiastical* 192.  
*their defection from Rome, and*  
*submission to the Crown* 206

Clergy upon Trial *but once*  
*allowed* 257. *in some cases dis-*  
*allowed* 250, 298

Commissioners Ecclesiastical  
 288. *High Commission* *ibid.*

Conjuration, *vide* Witch-  
 craft

Conservators of the Truce  
 162

Constables Court. *vide* Mar-  
 shals Court

Convocation established by  
 Parliament 151. *it then under-*  
*took great matters, but much*  
*more after the Clergies forsaking*  
*the Pope* 229

Councils, the Privy Council  
*ordered by Parliament* 21, 33,  
 141. *of use for sudden motions*  
 27. *their Oaths* 29. *and Juris-*  
*dictions* 31. *and power* 142

Magnum Concilium, or the  
 grand Council of Lords 28

Crown intitled not by De-  
 scent 128, 277. *but intailed*  
 128. *vide* 188. *Womanhood*  
 270. *Couverture* 273

Custos Regni, a formality  
 of State under the Parliaments  
 Order 134. *many times conferred*  
*upon Children* 137. *and upon a*  
*Woman* 252

## D.

**D**elegates, *though named by*  
*the King, yet by Autho-*  
*rity of the Parliament* 227

Defender of the Faith  
 213

Dispensations, Licenses and  
 Faculties, *never in the Crown,*  
*but by the Parliament given to*  
*the Archbishop under limitati-*  
*ons* 234, 238

Duels, *ordered by the Mar-*  
*tial as Subservient to the Com-*  
*mon Law* 108

## E.

**E**dward the Third his Reign  
 3. *his Title upon Entry by*  
*Election* *ibid.*

Edward the Fourth his  
 Reign, *though had Title of*  
*Inheritance, yet entred by Ele-*  
*ction* 181

Edward the Fifth approached  
 the Crown by Inheritance, *but*  
*never put it on* 184

Edward the Sixth his Reign,  
*his Title and Possession did meet,*  
*though he was a Child, and*  
*his Sister Mary grown in age*  
 259

Ecclesiastical Power, *vide*  
 Prelacy and Prelates

Elizabeth

# The Table.

Elizabeth *Queen, her Reign,*  
 264. *her Title by Election* 278  
*Englishire taken away* 95  
*Episcopacy, vide Prelates*  
*and Prelacy*  
*Errors, vide Heresie*  
*Exchange ordered by the*  
*Statute* 75  
*Excommunication* 271. *the*  
*Writ de excommunicato*  
*capiendo ordered* 289. *vide*  
*Parliament exportation* 72

## F.

**F**alse News punished 112  
*Felony by riding in armed*  
*Troops* 95, 113, 172, 257, 299  
*First-fruits regulated* 153.  
*taken away from Rome* 222  
*Forcible Entries* 173  
*Forts, Fortifications and*  
*Castles, ordered by Parliament*  
 252, 295.

## G.

**G**oal - delivery by the  
*Judges of the Benches*  
 92, 165. *vide Judges*  
*Goals regulated* 123, 254  
*Guard for the King's*  
*Person, brought in by Henry*

*the Seventh* 195  
*Giplics made Felons* 299

## H.

**H**enry the Fourth his Reign,  
*doubtful in his Title, but*  
*rested upon Election, chosen by*  
*Parliament, sitting when there*  
*was no King* 116. &c.

*Henry the Fifth his Reign,*  
*his Title by an Intail, by the*  
*Parliament* 119, &c.

*Henry the Sixth his Reign,*  
*his Title by the Intail last*  
*mentioned, though a Child, he is*  
*admitted to the Crown*

123, &c.

*Henry the Seventh first settled*  
*a constant Guard, his sixfold*  
*Right to the Crown, and his*  
*gaining Prerogative in the*  
*Persons and Estates of the People*  
*ibid.* 294, &c.

*Henry the Eighth his natural*  
*Endowments* 199, &c. *his*  
*power in the matters Ecclesiasti-*  
*cal* 206, &c. *in Temporals*

213, &c.

*Heresie and Error in*  
*Doctrine under the cognisance*  
*of the Civil Magistrate* 62  
 156. *not punishable by death*  
*by Law till Henry the*  
*Eighth's time* 216, 236. *the*  
*Writ*

# The Table.

*Writ De Heretico comburendo* hath no legal ground in any of those former Times 63, 158, 161, 216; 236

Honours, *vide* Parliament  
Hospitals, visited by the Prelacy 154

## I.

**I**mportation 70  
Judges of Assizes 165. 244  
Jurisdiction Ecclesiastical not originally in the Prelacy, nor absolutely 235  
Justices of the Peace, their residency and quality, their number various, their work also 109, 171. one Justice 112. and the settling of their Session *ibid.* their power to take Bail 254

## K.

**K**ings, *vide* Parliament, Allegiance, Supremacy, Militia.

## L.

**L**abourers, their Work and Wages 70. ordered by the Justices of the Peace 110  
Lancaster, the Princes of that House friends to the Clergy in policy 146  
Laws made by the Successors

of Henry the Eighth, during their minority annulled 117.  
Ecclesiastical Laws, *Vide* Parliament.

Leiges by Birth, though not born within the Allegiance of England 97

Liveries and Tokens inhibited to the Lords 112, 177. and limited in the King's person 177. means of jealousy between the King and his People 244

Libels in the Spiritual Court to be delivered in Copies upon demand 154

Licenses, *vide* Dispensations

Lords, their power and jurisdiction in the Parliament 23. in Council 29, 242

Lunacy, no impediment in Trial of Treason 258

## M.

**M**ary Queen, her Reign 261. her Title by Election 278. she prejudiced her Supremacy by Marriage 275  
Marque and Reprisal 209  
Martials Court 107  
Matrimonial Causes after the Reformation by Henry the Eighth, in the Cognisance of the Clergie by leave 238

V v Militia

# The Table

Militia 98, 175, 245, 209  
*vide War*

Mint 74, 142, *vide* Parliament

Monasteries dissolved 200  
*maintained by Henry the Fourth* 147

Money out of England to Rome stopped 54

## N.

**N**avy Royal, as Forts for the publick safety maintained at the publick charge

253

Nisi prius 167

Non-residency 238

Noble Ladies Trial 174

## O.

**O**yer & Terminer 92, 165  
Ordinary not to be questioned in the Civil Courts for things under Ecclesiastical jurisdiction 47, 49 *hath Cognisance of Usury* 47. of Avoidances, Bigamy and Bastardy 48. grant Administration 51. visit Hospitals, and call Executors to account 154. *hath power to fine and imprison* 157, 239. to keep Courts, but the Authority doubtful 235. *have Cognisance of the Heresie* 156, 236. Matrimony, Non-residency

236. *In Queen Elizabeths time their jurisdiction left in doubt* 286, &c.

Oath ex Officio first brought in by the Chureh men, in matters Ecclesiastical 157. afterwards by the Parliament into the Star chamber, in cases criminal 244

## P.

**P**ardon of Crimes not absolutely in the King 19

Parliament without the King consisting of three States 117. without the Clergie 58

Parliaments power in ordering of the Crown 127, 228, 277

In ordering the King's Person by Protectors 14. *vide* Protector In ordering their children.

In ordering their Family 15, 129

In ordering their Revenues 16, 129, 115

In ordering their Council 141

In the Militia, *vide* Militia and War

In conferring places of Honour and Trust 20, 39

In ordering the Mint, *vide* Mint

In making Ecclesiastical Laws

Concerning Church Government 224, &c. 208, 281

Concerning

# The Table.

*Concerning Doctrine* 211,  
 224, 236, &c.  
*Concerning Worship* 224  
*Concerning Church-censures*  
 240  
*In granting Licenses and*  
*Dispensations* 234  
*In final appeals* 227  
*In ordering it self* 24, 130  
*In Judicature* 25, 190  
*Parliament not inconstant,*  
*though mutable* 188  
*Peace, Justices and their*  
*Sessions* 109, &c. 170, &c.  
 253, &c. 297, &c.  
*Penal Laws executed to get*  
*money* 184, 196  
*Pleadings in English* 98  
*Pope's power in England*  
*abated* 56, &c. *vide Ordinary,*  
*Supremacy, Archbishop*  
*Prelacy not favoured by the*  
*Canon* 239. *their power since*  
*the time of Queen Mary* 283.  
*their dignity and power distin-*  
*guished* 46, 58  
*Priests Wages* 70, 155  
*Præmunire and Provifors*  
 54, 58, &c. 151  
*Proclamations made equal*  
*to Laws* 214. *altered* 269  
*Protectors, variety of them*  
*makes a doubtful Government*  
 4, 8, 123  
*Purveyance regulated* 53,  
 65

R.

**R** *Aviſhment conſented to,*  
*forfeits Joynture* 96  
*Requeſts Court eſtabliſhed*  
*by Cardinal Woolſy* 241  
*Richard the ſecond his Reign*  
 6. *endeavours to over-rule the*  
*Parliament, but failed in the*  
*Concluſion* 11  
*Richard the Third's Reign*  
 184. *his Title by Uſurpation,*  
*and Murder* Ibid.  
*Riots* 173

S.

**S** *Anctuaries changed into*  
*fewer priviledged places* 257  
*Servants imbezilling Felony*  
 258, 299  
*Sheriffs Courts regulated*  
 254. *Election of Sberiffs* 93.  
*Farm of the County* 168. *con-*  
*tinuance in ſervice* Ibid. *Extor-*  
*tion* Ibid.  
*Soldiers, vide War*  
*Staple* 72, &c. 190  
*Star-Chamber* 31, &c. 242  
*Stealers of Men and Women*  
*Felony* 299  
*Supremacy, Supreme Head*  
 206. *certainly not abſolute or*  
*arbitrary power, nor a Legiſlative*  
*power* 288, &c. *Supreme Go-*  
*vernour* 270. *in cauſes Eccle-*  
*ſiaſtical*

# The Table.

*ecclesiastical 270, &c. in Temporal*  
Ibid.

T.

**T**Enths and First-fruits 222  
Torniamment 108  
Tonnage and Poundage 189  
Trade 64, 190  
Treason 76, &c. By thoughts:  
by marriage, and counterfeiture  
255, 256. tried where the King  
will 258. Petty Treason 95

W.

**W**ales subdued by Henry  
the Fourth 118. United

to the English Crown by Henry  
the Eighth 241

War by advice of Parliament  
98, 175. Levying of men 101,  
176, 248, 290. Jurati & obli-  
gati ad arma, taken away 100.  
Arming of men 100, 290. Con-  
duct to their Rendezvous 101.  
Running from their Colours  
101, 108, 296. Plunder satisfied  
101. Their pay 176, 251, 296.  
Offensive and Defensive 291  
Watches, inquired into by  
Justices of the Peace 173  
Wicklief 60  
Wills probate 154  
Witchcraft made Felony  
257, 299.



## F I N I S.